

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

CR-7987-2016 (O&M)

Date of Decision: November 01, 2019

Kultar Singh

..... Petitioner

VERSUS

Ranjit Singh and another

..... Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Sanjay Majithia, Sr. Advocate with
Mr. Inderjit Singh, Advocate
for the petitioner.

None for respondent No.1.

Mr. Chander Kant Thakur, Advocate for
Mr. Satbir Rathore, Advocate
for the respondent No.2.

JAISHREE THAKUR, J.(Oral)

1. The petitioner in the instant petition seeks to challenge the impugned judgment of the Rent Controller, Dasua whereby the eviction petition filed under Section 13-B of the East Punjab Urban Rent Restriction Act stands dismissed.

2. In brief the facts are that the petitioner who is an NRI and is having a passport issued by United Kingdom of Great Britain and Northern Island filed a petition against the respondent-tenant. It was submitted that after the death of his father in the year 1979, the shops in dispute were inherited by

him and his brother-Avtar Singh on the basis of a Will dated 09.10.1967.

3. The petitioner being a co-sharer in the shop filed an ejectment application on the grounds of bona-fide necessity. It was submitted that the co-sharer respondent No.2 namely his brother had no objection to the eviction petition that was filed. Upon notice, respondent No.1-the tenant appeared and filed a written statement raising the preliminary objection that there is no relationship of landlord and tenant between the parties. It was pleaded that the petitioner being an employee in U.K. had nothing to do in India and he is infact a tenant in the shop but under respondent No.2. Respondent No.2 filed a separate written statement and took the preliminary objection that the petitioner is not the owner of the shop in dispute which belong to respondent No.2 and her son-Harjinder Singh. It was earlier owned by late Sh. Ralla Singh who had purchased the same by a registered sale deed and after his death respondent No.2 and her son became owner of the Registered Will dated 18.07.1979 executed by late Sh. Ralla Singh. On the pleadings of the parties, following issues were framed:-

- a. *whether the petitioner bonafidely requires shop in question? OPP*
- b. *Whether the petitioner is non-resident of India?*
- c. *Whether there is a relationship of landlord and tenant between the parties?*
- d. *Relief.*

4. In order to prove his case PW-1 tendered his evidence and sworn affidavit. The petitioner also examined Sh. Jaspal Singh, halqa patwari, PW-2 who deposed to the effect that on the basis of a registered Will dated

02.11.1967, mutation No.387 was sanctioned in the name of Kultar Singh to the extent of half share and Kuldip Kaur widow of Avtar Singh and Harjinder Singh to the extent of half share. Parminder Singh, registration Clerk was examined PW-3 who deposed to the effect regarding the Registered Will dated 02.11.1967. The petitioner stepped into the witness box as PW-4 who tendered into evidence his duly sworn affidavit and exhibited a copy of his passport as Exhb. P-5 and copy of the Will as Exhb. P-4. On the other hand Ranjit Singh stepped into the witness box as RW-1 and tendered is sworn affidavit as Ex. RW-1/A and reiterated the entire contents of the written statement. He also proved on record a copy of rent note dated 08.09.1987, certified copy of judgment dated 09.01.2001 and judgment dated 30.07.2001-Exbh. R-2 and R-3.

5. On hearing of both the parties, the Rent Controller came to the conclusion that the Will on the basis of which the petitioner was claiming to be the owner of the shop could not be relied upon as the same had not been proved as per the provisions of Section 16 of Indian Evidence Act. The Rent Controller took note of the fact that the tenant in his cross-examination had clearly stated that the shop in dispute was lying closed since 1981 and that it had been admitted by the tenant that the petitioner requires the shop, however, despite the said admission, the eviction petition was dismissed on the ground that the Will on the basis of which ownership had been claimed had not been proved. Aggrieved against the dismissal of the eviction petition, instant revision petition has been filed.

6. Learned counsel appearing on behalf of the petitioner assails the judgment dated 09.09.2016 on the ground that it was not within the domain of

the Rent Controller to give a finding regarding the validity of the Will which had been acted upon.

7. I have heard learned counsel for the parties and with their assistance have perused the order declining the eviction of the petitioner under Section 13-B of the East Punjab Rent Restriction Act. Admittedly a reading of the order clearly reflects that the Rent Controller has erred in taking a decision on the validity of the Will by holding that the statement of the attesting witness have not come forth to prove the Will in accordance with Section 68 of the Indian Evidence Act. The Rent Controller went on to hold that even if the attesting witnesses are no longer alive the Will ought to have been proved with the aid of provisions of Section 69 of the Indian Evidence Act. In the opinion of this Court it is not for the Rent Controller to decide the issue of title to the property. The respondent No.2 is none other than the widow of brother of the petitioner who became co-sharer along with the petitioner after the death of Avtar Singh. The petitioner being a co-sharer has a right to file an eviction petition and would be entitled to seek eviction under Section 13-B of the East Punjab Urban Rent Restriction Act given the fact that he is a non-resident Indian. The respondent in his cross-examination has clearly admitted to the fact that he is not occupying the premises and he is residing abroad and therefore, the Rent Controller clearly failed in not ordering eviction. Even today when the matter has been taken up for arguments there is no appearance on behalf of respondent No.1 despite due service. Therefore, this Court is of the opinion that the Rent Controller erred in dismissing the claim of the petitioner that he is a co-sharer in the property in dispute on the ground that the Will that they were relying upon was not duly proved. Moreover the Rent

Controller also failed to appreciate the statement given by the Halqa Patwari that the Will had been acted upon and the mutation sanctioned to the extent of half share in the property.

8. Learned counsel for respondent No.2 submits that he has no objection in case the order of the Rent Controller is set aside and if eviction is ordered.
9. Ordered accordingly.

November 01, 2019

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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes.
Whether reportable	No.