

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

CR No.1679 of 2019(O&M)

Date of decision: 13.3.2019

Javitri Devi and another

.....Petitioners

VERSUS

Vijay Kumar Mittal and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Ramesh Hooda, Advocate for the petitionerds.

REKHA MITTAL, J.

The present petition directs challenge against concurrent findings of fact whereby the petitioners have been evicted from the tenancy premises on the grounds of material alteration that has impaired value and utility of the shop, the petitioners have caused nuisance by merging the verandah into shop and the shop is required by the respondent for bona fide use and occupation. However, the eviction on the ground of arrears of rent, house tax and subletting was dismissed.

The respondent Vijay Kumar Mittal sought eviction on the aforesaid three grounds with the allegations that the petitioners without consent of respondent made material alterations by merging the verandah marked ADEF of the shop marked FBCE by constructing wall DE on the north and AF on the south of verandah and fixing iron shutter by changing shape of both pillars from hexagonal to rectangular. The petitioners have caused nuisance to occupants of building, neighbours and public in general by blocking ingress and egress through verandah by merging verandah into shop without consent of respondent. The respondent wants to do business

of cloth in the shop in dispute and verandah which is just adjacent to his house and most suitable for his business.

Counsel for the petitioners has assailed findings of the Courts with regard to bona fide personal necessity of the petitioners by raising two-fold submissions. It is argued that the respondent is co-owner of shops No.1, 2, 5, 8, 9 and 20 and those shops are lying vacant, therefore, respondent No.1 does not require shop No.6 (disputed shop), even if he actually wants to start business at Charkhi Dadri after his retirement though the respondent and his family throughout had been residing away from Charkhi Dadri in connection with his job. Another submission made by counsel is that the respondent had shops in another area of Charkhi Dadri but he has transferred those shops in favour of his nephew by executing release deed and the same falsifies and belies his contention that he did not own or vacate any other such property in the urban area concerned after commencement of The Haryana Urban (Control of Rent & Eviction) Act, 1973 (in short 'the Act'). In addition, it is argued that as all the co-sharers of shops No.1, 2, 5, 8, 9 and 20 are in possession of the shops, the respondent is guilty of concealing material fact from the Court with regard to his ownership and possession of the aforesaid six shops.

With regard to findings of the Court that the petitioners are guilty of making additions and alterations materially impairing the value and utility of the shop in question on account of merger of verandah into shop, it is urged that the same suffer from material irregularity as the respondent has not specifically pleaded as to since when the said alteration has been made by the tenant or his successors in interest as originally

Pandit Ram Kumar Vaid (since deceased) was the tenant in the property and the petitioners are successors of said Pandit Ram Kumar Vaid.

I have heard counsel for the petitioners, perused the paper-book and copies of documents particularly testimony of Vijay Kumar Mittal made available during the course of hearing.

Counsel for the petitioners, in response to a query, is fair enough to inform that none of the shops which are owned by the respondent to the extent of 1/4th share is in actual much less exclusive possession of the respondent. Indisputably, the respondent was an employee of National Textile Corporation (Gujarat) Ltd., a government undertaking and he retired from service in the year 2003. It has come on record that the shops which are owned by the respondent with his brothers are actually in possession of other co-owners even though no business activity is conducted in the said shops. Since the respondent cannot be said to be in possession of the shops of which he is one of the co-owners, the petitioners can neither be heard to say that the respondent is in possession of adjoining shops or he is guilty of concealing the factum of his possession of any other property in the urban area concerned. Though the respondent has pleaded that he is neither owner nor in possession of any such building in the urban area concerned and has not disclosed the factum of his co-ownership of shops No.1, 2, 5, 8, 9 and 20 but as per the provisions of the Act, the requirement is only with regard to possession and not ownership of any such building in the urban area concerned.

So far as contention of the petitioners in respect of shops transferred by the respondent in favour of his nephew by way of release deed, there is no material on record to suggest that those shops were in

possession of the respondent, therefore, he is guilty of mis-stating the fact that he has not vacated any such building without reasonable cause after commencement of the Act. It appears that the petitioners have tried to intermingle the factum of ownership and possession in order to raise the issue with regard to co-ownership of the respondent of shops No.1, 2, 5, 8, 9 and 20 and transfer of the shops by way of release deed. The legislature in its wisdom has not used the word 'ownership' but has used the expression 'possession' of any such building in the urban area concerned or 'vacation' of any such building after commencement of the Act. In this view of the matter, contention of the petitioners on the basis of shops co-owned by the respondent or shops transferred by him by way of release deed in favour of his nephew would not carry any weight. In this view of the matter, I do not find any material irregularity much less illegality in consistent findings upholding plea of the respondent that he needs the tenanted shop for his personal use and occupation as he wants to start business of cloth in the shop, after his retirement.

The respondent has raised a categorical plea in respect of alterations made by the petitioners by merging verandah in front of shop into that of the shop and fixing iron shutter by changing shape of both pillars from hexagonal to rectangular. No doubt, the respondent in his petition has not specifically stated as to when the alleged alteration was made by the petitioners. However, in his cross examination, he has deposed that this alteration was made about 10 years ago. Counsel for the petitioners has not pointed out any materials on record that the alteration complained of was made with the consent of respondent or the respondent acquiesced in the alteration as he had received rent even after seeing the

alleged alteration made by the petitioners. On the contrary, the plea of the respondent is that rent since 01.04.1993 till date is due in eviction application filed in the year 2012. In this view of the matter, I do not find an error much less illegality in findings recorded by the Courts that the petitioners/tenants are guilty of making alteration in the tenancy premises that has resulted in material impairment to value and utility of the shop in question.

No other point has been raised.

For the foregoing reasons, finding no merit, the petition fails and is accordingly dismissed in limine.

MARCH 13, 2019

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no