

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

CR No. 5891 of 2019 (O&M)
Date of decision: 25.9.2019

Usha Dhir

...Petitioner

Versus

Varinder Sareen and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Jatinder Nagpal, Advocate,
for the petitioner.

Mr. Puneet Jindal, Senior Advocate with
Mr. Ashutosh Gupta, Advocate,
for respondent No.1.

Mr. Vikas Bali, Advocate,
for respondents No. 2, 3 and 5.

Mr. Sartej Singh Narula, Advocate,
for respondent No.6.

JAISHREE THAKUR, J. (Oral)

1. The dispute arises in the instant revision petition is from an application that has been filed under Order 1 Rule 10 of the Code of Civil Procedure, wherein the application stood dismissed by the Rent Controller.

2. Learned counsel for the petitioner, while assailing the impugned order, submits that the Rent Controller has erred in dismissing the application so filed for impleadment. It is submitted that the eviction petition is not maintainable in the back drop of the fact that co-owner had not been impleaded as a party. In support of his contention, he relies upon

the judgments rendered in **Gyan Aggarwal Versus Brij Bhushan Salwan 2019 (1) R.C.R. (Rent) 419.**

3. It appears that one Des Raj died leaving behind two sons, namely Mohan Lal and Sudarshan Kumar. Mohan Lal had left behind his widow—Janak Dulari and five children, namely Kishore Sareen, Usha Dhir, Vijay Sareen, Ashok Sareen and Rajesh Sareen, whereas Sudarshan Kumar left behind Varinder Sareen and Neena Khanna. Varinder Sareen filed an ejectment application against the tenant M/s Leader Jewellers on the ground of personal necessity and non-payment of rent, which is duly contested. It is during these proceedings that an application under Order 1 Rule 10 of the Code of Civil Procedure came to be filed by Usha Dhir d/o Mohan Lal claiming to be a co-sharer in the said property by virtue of having inherited a share in the said property from her mother, namely Janak Dulari w/o Mohan Lal.

4. Learned counsels appearing on behalf of the respondents herein would contend that Usha Dhir—petitioner has no right, title or interest in the property as neither she is a co-owner as on date, since as per her own averments in the application under Order 1 Rule 10 of the Code of Civil Procedure she has admitted having sold her share in the said property to one Smt.Vijay Kumari w/o Sham Sunder Chopra, the tenant. Moreover, she could not claim to be legal representative or entitled to inherit the property of late Smt. Janak Dulari since she has executed a valid Will in favour of one of her sons, namely Kishore Sareen. Learned counsel points out that the Will is under challenge and as on date the Will has not been set aside nor any partition pertaining to the property of late Des Raj/Janak Dulari has

finalised. It is also contended that the application itself is not maintainable in the rent proceedings since as on date neither is Usha Dhir a owner nor a co-sharer. She would be entitled to claim co ownership only if she is successful in having the Will set aside. It is brought to the notice of this Court, which fact is not disputed by the counsel appearing for the petitioner, that Smt. Usha Dhir, petitioner here in, has already preferred a separate rent petition seeking ejectment of the tenant/respondents individually.

5. The law is well settled that an eviction can be sought by the landlord, who need not be the owner of the same and it is also well settled that one of the co-owners of the building can file a suit for ejectment of the tenant. It is not necessary for the co-owner to show that he has taken the consent of all other co-owners before initiating eviction proceedings before the Rent Controller. In this regard, reference may be made to the judgment rendered in **Mohinder Prasad Jain Versus Manohar Lal Jain 2006 (2) R.C.R. 36**. It is only in the event when a co-owner objects, it becomes a relevant fact, whether consent has been taken or not before filing an ejectment petition. The necessity of impleading Usha Dhir would not arise since as per her own admission, she has sold her share, which she had inherited from Mohan Lal to one Smt. Vijay Chopra and at the present moment she has not been successful in establishing co-ownership claiming a part of the property through Janak Dulari and the Will of her late mother has also not been set aside. Moreover, Usha Dhir could have not possibly objected to Varinder Sareen claiming ejectment since she herself has initiated eviction proceedings against the said tenant. The Rent Controller is only to decide the question, whether eviction can be ordered on the ground

of personal necessity, non-payment of rent or any of the grounds as taken in the ejectment petition and is not competent to decide the question of title as is being raised by the petitioner herein. The judgment referred to by the petitioner would not be applicable to the facts of the present as case the same is distinguishable and does not take into consideration the law as settled in **Mohinder Prasad Jain's case (Supra)**.

6. Consequently, finding no ground to interfere, the revision is dismissed. However, before parting with this order, it is stated that any observation made above is only for the purpose of these proceedings and will have no bearing on the proceedings filed to challenge the Will of Janak Dulari.

25.9.2019
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No