IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ESA-56-2019 (O&M)
Date of Decision : 16.10.2019

Santosh Rani ..... Appellant

Versus

Ambrish Singhal and another ..... Respondents

CORAM : HON'BLE MR. JUSTICE RAMENDRA JAIN

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Present : Mr. Alok Mittal, Advocate
for the appellant.

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RAMENDRA JAIN, J. (Oral)

Appellant-objector, through this execution second appeal has laid challenge to the judgment dated 07.09.2019, affirming the order of the Executing Court dated 17.08.2017, whereby her third party objections under Order 21 Rule 99 read with Section 151 CPC were dismissed.

Briefly, respondent No.1 filed an eviction petition under Section 13 of the East Punjab Urban Rent Restriction Act against respondent No.2 for ejecting him from the shop measuring about 6 x 18', duly mentioned in his eviction petition.

The learned Rent Controller, after holding trial and affording full opportunities to both the sides, ordered eviction of respondent No.2 vide order dated 29.04.2015.

Feeling aggrieved, respondent No.2 filed appeal, but got the same dismissed as withdrawn. Thus, the order of eviction dated 29.04.2015 against respondent No.2 attained finality.

Thereafter, respondent No.1-landlord filed execution petition in which respondent No.2-tenant filed objections, challenging the validity of

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the eviction order against him. The same were dismissed by the Executing Court vide order dated 17.08.2017

Thereafter, appellant, who is none else, but real sister-in-law of respondent No.2-tenant, came into picture and filed third party objections, pleading that in a family partition, the demised shop had fallen to the share of uncle of respondent No.1 namely Ashok Kumar from whom she had purchased it, vide sale deed dated 18.05.2012. Since there was no eviction order against her, therefore, she could not have been evicted, pursuant to an order passed against her brother-in-law/respondent No.2.

The Executing Court dismissed the objections of the appellant vide detailed order dated 17.08.2017.

Feeling aggrieved, the appellant approached the first appellate court, but remained unsuccessful as her appeal too was dismissed vide judgment dated 07.09.2019.

Learned counsel for the appellant contends that as soon as in the reply, filed by respondent No.2, it was brought to the notice of respondent No.1, alleged landlord, that appellant had already purchased the demised shop, it had become bounden duty of respondent No.1 to implead the appellant as a party in the eviction petition to seek her eviction from the demised shop. In the absence of any eviction order, the appellant cannot be evicted from the demised shop, being a legal owner. Respondent No.2, though, is brother-in-law of the appellant but he, illegally and with malafide intention, connived with respondent No.1. Respondent No.1 had also filed similar eviction petition against a third person, namely Girbar Krishan, claiming his ownership over the adjacent shop to the demised shop, which was dismissed by the Rent Controller vide order dated 20.05.2014, holding

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that he could not prove his claim.

Having given thoughtful consideration to the submissions made by learned counsel for the appellant, this court finds the instant appeal merits dismissal for the reasons to follow.

Admittedly, appellant is the real sister-in-law of respondent No.2 against whom eviction order dated 29.04.2015 (Annexure A-1) was passed. It has nowhere been pleaded by the appellant that she had ever strained relations with him. Therefore, it is apparent from the very beginning that the appellant was well aware of the eviction proceedings against her brother-in-law, which remained pending for about four years. But, at any point of time, the appellant did not wish to come before the Rent Controller to say or plead that eviction petition filed by respondent No.1 against respondent No.2 was bad in law and not maintainable in view of the purchase of the demised shop by her. Her silence, during the pendency of eviction proceedings against respondent No.2, her brother-in-law, shows her connivance with him and a secret arrangement amongst them to defeat the legal right of respondent No.1, who obtained eviction order after fighting a legal battle for about 5-6 years.

More so, the appellant has claimed her ownership over a shop measuring about 10.05 square yards, whereas the area of the demised shop is 12.5 square yards. Thus, it is apparent that demised shop is altogether different from the shop which was allegedly purchased by appellant from Ashok Kumar. The appellant has failed to establish the identity of the shop purchased by her.

It is pertinent to mention here that respondent No.2 admitting ownership of respondent No.1 over the shop in dispute, pleaded that he had

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already surrendered possession of the demised shop, but despite that Rent Controller continued proceedings for around four years. Respondent No.2 in his written statement pleaded that he had handed over the vacant possession of the demised shop to her sister-in-law i.e. appellant. Thus, it can safely be presumed that respondent No.2 must have also informed at that very moment to appellant about pending eviction proceedings filed by respondent No.1 against him but still the appellant did not come forward to become a party and challenge the eviction proceedings. Her above act and conduct certainly estops her from filing third party objections from this angle also. The objections raised by appellant before the Executing Court were already taken care of and dealt with by the Rent Controller appropriately assigning sound reasoning. Both the Courts below have rightly observed that the appellant cannot be permitted to reagitate the same by way of third party objections.

I have gone through the judgments of both the Courts below and the same do not suffer from any illegality or irregularity and as such, do not call for any interference by this Court.

No question of law much less substantial has been raised in this appeal. Hence the same is held not maintainable.

Dismissed.

(RAMENDRA JAIN)
JUDGE

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Whether speaking/reasoned Yes/No
Whether Reportable Yes/No

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