

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

**RSA No.5008 of 2015 (O&M)
Date of Order: 25th March, 2019**

Kamal Taneja and another

...Appellants

Versus

Roshan Lal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjiv Gupta, Advocate,
for the appellants.

Mr. Sunil Chadha, Sr. Advocate with
Mr. Sharad Mehra, Advocate,
for the respondents.

ANIL KSHETARPAL, J.

Defendants no.2 and 3 are in the regular second appeal against the judgment passed by the learned first appellate court reversing the judgment passed by the learned trial court and decreeing the suit for possession filed by the plaintiffs-respondents.

In the considered view of this court, questions of law which require adjudication are:-

- (1) Whether the tenancy in favour of partnership firm on its dissolution would stand transferred to individual partners and they would become independent tenants or joint tenants having no individual rights of tenancy?
- (2) Whether one of the partner of a dissolved firm can maintain a suit for possession against the landlord after surrender of the possession of tenanted premises by

some of the erstwhile partners of the firm to the landlord after closure of business by the partnership firm?

The facts proved on file are that M/s Mohan Dass Lal Chand was a partnership firm with 4 partners namely Lal Chand, Shyam Lal, Gopal Dass and Hari Dass. The partnership firm took on rent a shop, i.e the suit property, from its owner Harbhajan Singh @ Rs.65/- per month. One of the partner Shyam Lal retired and the plaintiff was introduced as a partner. Both the courts have found that partnership firm was dissolved on 29.01.1998. Thereafter, the shop was closed and no business was conducted from the shop. In the meantime, original owner also died and Smt. Lalita, defendant no.1, filed a petition for eviction of the firm under the provisions of the East Punjab Urban Rent Restriction Act, 1948. She impleaded the firm as well as various partners as respondents. However, in the eviction proceedings all the partners could not be served with notice and eviction proceedings against respondents no.1, 3 to 6, namely, the firm, Hari Lal, Roshan Lal, Shyam Lal and Diwan Chand were dismissed under Order 9 Rule 2 of the Code of Civil Procedure(for non-prosecution). However, proceedings in the eviction proceedings against respondent no.2 continued.

Inter-se between the ex-partners also there was a civil suit filed by Gopal Dass and Hari Lal for perpetual injunction against defendant no.1 restraining him from interfering or inter-meddling into the peaceful and joint possession of the plaintiffs as tenant in the shop in question. In the aforesaid suit for injunction, Roshan Lal (plaintiff-respondent herein) filed a written statement stating that the shop in question is lying locked since December, 1997 as there were certain disputes between the partners of the firm. The relevant extract of paragraph 4 of the written statement is

extracted as under:-

“In fact the disputed premises are lying locked since December, 1997 as there arose certain disputes between the partners of the firm i.e. between the present parties. The litigation between the present parties is also pending in the courts of S. Gurjant Singh, CJJD and Sh. Tarsem Mangla, CJJD, Amritsar and this kind of situation has arisen due the acts, deeds and conduct of the plaintiffs themselves. Further, the business of the firm of the both parties has already been dissolved in the disputed premises and no business transaction took place ever after December, 1997 in the disputed premises. The photographs of the locked disputed shop is already on the court record for the kind perusal of this Hon'ble Court.”

In the eviction proceedings an application was filed by Roshan Lal claiming that Gopal Dass, Hari Lal, Shyam Lal and Diwan Chand, other respondents, are making an effort in collusion with landlady and they intend to oust him from the property. This application is dated 08.05.2006. It has come in evidence and found by both the courts below that the landlady was handed over possession and she suffered a statement on 17.07.2006, Ex.D7 that she had been handed over possession pursuant to a compromise and she has obtained possession as well as rent upto 20.06.2006. Therefore, the rent petition was dismissed as withdrawn.

It may be noted here that Smt. Lalita sold the property to the appellants i.e sons of Hari Dass vide sale deed dated 21.06.2006 and

delivered possession. The present suit was filed by Roshan Lal-respondent no.1 claiming that he had been forcibly dispossessed from the shop in question after breaking open the lock on the intervening night of 09.06.2006 and therefore, he is entitled to possession of the property. The suit was contested by defendants no.2 to 7 as Lalita-defendant no.1 did not choose to appear. It was pleaded by defendants no.2 to 7 that the firm was a tenant and since 1997 the business of the firm was closed and the shop in question was lying locked, hence the plaintiff had thereafter no concern with the disputed shop and defendants no.2 to 3 have been handed over possession of the premises by the owner. It was further pleaded that the plaintiff was not in possession of the premises.

Learned trial court on appreciation of the evidence dismissed the suit after finding out that the plaintiffs have not come to the court with clean hands and plaintiffs failed to prove that he has been dispossessed by the defendants as alleged in the suit.

However, learned first appellate court reversed the judgment of the learned trial court after recording a finding that after dissolution of the firm on 29.01.1998, each partner became tenant in the shop in question in its individual capacity and therefore plaintiff is entitled to possession. The court further held that the finding of the trial court to the effect that Roshan Lal was present when Gopal Dass suffered a statement that he has delivered possession is not correct because petition against Roshan Lal stood dismissed under Order 9 Rule 2 of the Code of Civil Procedure.

This court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the courts below and the photocopy of the record produced by learned counsels

for the parties, correctness whereof is not disputed.

Learned counsel appearing for the appellants has submitted that the suit filed by the plaintiffs was not maintainable because once the partnership firm stood dissolved with effect from 29.01.1998 on the death of Lal Chand as well as through a document, the partnership firm ceased to exist. Hence, an erstwhile partner of the firm has remedy under Sections 45 and 48 of the Partnership Act for settlement of the accounts. He further drew attention of the court that when landlady filed eviction proceedings, Gopal Dass filed written statement admitting that he is in possession of the property. He further drew attention of the court to the written statement of Roshan Lal, relevant part whereof has been extracted above wherein Roshan Lal has admitted that the shop is lying closed since December, 1997. He further submitted that the learned first appellate court erred in recording a finding that after the dissolution of the firm each ex-partner would become individual tenant. He submitted that the analogy as is applicable to the heirs of a tenant would be applicable and i.e. the tenants would be joint tenants and not tenants in common.

On the other hand, learned senior counsel for the respondents-plaintiffs has submitted that the judgment passed by the learned first appellate court is correct and in fact the remaining ex-partners have defrauded the plaintiff. Hence, he submitted that the decree for possession has correctly been passed.

Now the stage is set for answering the questions of law framed above.

QUESTION NO.(i)

“Whether the tenancy in favour of partnership firm on its dissolution would stand transferred to individual

partners and they would become independent tenants or joint tenants having no individual rights of tenancy?”

As regards question no.1, it is well settled that the tenancy is one and the tenancy does not get divided on the death of the tenant. Tenancy, no doubt, is heritable but the heirs inherit the tenancy as joint tenants and cannot claim any independent right in any part of the tenanted premises. Same analogy can be drawn in the case of tenancy in favour of partnership firm. Once the partnership firm stands dissolved, the partnership firm has ceased to exist and hence the erstwhile partners become joint tenants and not tenants in common. Recently, Hon'ble Supreme Court in the case of **Suresh Kumar Kohli vs. Rakesh Jain and another, (2018) 6 SCC 708** had occasion to deal with the issue as to what would be the status of the succeeding legal representatives after the death of a statutory tenant. The court went on to hold that the legal heirs would be joint tenants and not tenants in common. In these circumstances, it is to be examined that what are the individual rights of one of the ex-partner in case when the tenancy was in favour of partnership firm. Analogy as rightly contended by learned counsel for the appellants is required to be drawn that an ex-partner does not have any individual right in the tenanted premises. All the ex-partners can, at the most, claim to be joint tenants.

Hence, question no.(i) is answered in favour of the appellants and against the respondents-plaintiffs.

QUESTION NO.(ii)

“Whether one of the partner of a dissolved firm can maintain a suit for possession against the landlord after surrender of the possession of tenanted premises by some of the erstwhile partners of the firm to the landlord after closure of business by the partnership firm?”

In the considered view of this court, an ex-partner of a dissolved firm has rights as per the provisions of Chapter-VI of the Partnership Act, 1932. Section 48 of the Partnership Act, 1932 provides for mode of settlement of accounts between the partners. An ex-partner of a partnership firm can have remedy against other ex-partners in accordance with the provisions contained in the Partnership Act, 1932. Therefore, the suit filed by the plaintiffs for possession was not maintainable against the owners. Learned first appellate court has not found that the plaintiffs had been dispossessed from the premises in dispute by breaking open the lock on midnight of 09.09.2006. Once the plaintiffs had failed to prove this fact, suit for possession filed by him was not maintainable.

This issue can be examined from another angle. The present suit for possession was not filed by the plaintiff (respondent no.1 and the partnership firm) under Section 6 of the Specific Relief Act, 1963 on the basis of possessory rights. This suit was filed by the plaintiff seeking possession from the owners(successors to the landlady who was also owner). The suit filed by the plaintiffs could be decreed if the plaintiff establishes a superior right as compared to the defendants-appellants-owners. Unless they prove any better title or entitlement, suit for possession was not maintainable.

This aspect can also be examined on equity. Here is a case where defendants-appellants have purchased the property through a registered sale deed and they have been put in possession. No doubt, they are sons of one of the ex-partner. It is Roshan Lal himself, plaintiff-respondent who has pleaded that since December, 1997 the shop is lying closed and no business has been conducted by the firm or any one else after

the closure of the shop. In ideal situation, once the partnership had come to an end on dissolution dated 29.01.1998, possession of the premises should have been handed over to the landlady. Sale in favour of the appellants is in the year 2006 till that day Roshan Lal never made any attempt to get the possession. In such situation, in the considered view of this court, it would not be equitable to put the plaintiffs in possession in place of owners.

Further tenancy came to an end, once the possession was surrendered by the ex-partners in possession of the tenanted premises of the firm, hence, the ex-partner had no right to claim back possession.

In view of the aforesaid facts, question no.(ii) is also answered in favour of the appellants and against the respondents-plaintiffs.

As noticed above, the plaintiff's remedy is to proceed against the remaining ex-partners in accordance with the provisions of the Partnership Act, 1932 or claim damages. Accordingly, the judgment and decree passed by the learned first appellate court is set aside and that of the trial court is restored.

The regular second appeal is allowed.

25th March , 2019
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No