

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

CR No. 7346 of 2015(O&M)

Date of decision: 11.2.2019

Baldev Raj Gaba

.....Petitioner

VERSUS

Asha Rani

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Arun Jain, Senior Advocate with
Mr. Varun Parkash, Advocate for the petitioner.

Mr. Shailendra Jain, Senior Advocate with
Mr. Harman J. Singh, Advocate for the respondent.

REKHA MITTAL, J.

The present petition directs challenge against order dated 04.09.2015 passed by the Appellate Authority, Kaithal whereby appeal against order dated 26.02.2014 passed by the Rent Controller, Kaithal dismissing the application for eviction, was allowed and the petitioner/respondent was directed to hand over vacant possession of tenanted premises to the respondent/petitioner within one month.

The present dispute is between real brother and sister, children of Sh. Ram Lal in respect of ground floor of property bearing MCK No.402/18, a double storeyed building. The respondent Asha Rani filed the eviction application on the allegations that the petitioner is a tenant on the ground floor on monthly rent of Rs.800/- inclusive tax. She sought the eviction on the grounds of non-payment of rent since 01.01.2008 and

tenanted premises is required for use of her husband namely Dharam Pal. It is averred that shop at the ground floor is under tenancy of the petitioner whereas stairs on the ground floor, first floor and second floor are in possession of another tenant namely Devi Saran son of Hardayal.

The petitioner filed reply and raised preliminary objections inter alia maintainability; estoppel; non-joinder of necessary parties; suppression of true and material facts and petition being barred by principle of constructive res judicata. It is averred that Sh. Ram Lal purchased land beneath the property in dispute having old construction in the year 1972 by spending amount including stamp duty, registration and other charges in the name of respondent out of love and affection as she was the only daughter of Sh. Ram Lal and he wanted to do something for his daughter. After purchase of land, petitioner, Sh. Ram Lal and Radha Krishan (another son of Ram Lal) constructed two storeyed building by spending huge amount and started business of shoes on the ground floor. In November 1972, an oral family settlement took place among the petitioner, Radha Krishan, respondent herein in presence of Ram Lal and it was decided that sons of Ram Lal shall retain ownership of ground floor and ownership of first and other floor shall be of the respondent and as such the petitioner has been doing business on the ground floor since November 1972. Later in the year 1981-82, the respondent got constructed second floor with the help of petitioner and others. The first and second floor of MCK No.402/18 is the ownership of respondent. Still later in the month of March 1995, husband of respondent started to denounce petitioner's title in the alleged tenanted premises. The petitioner requested

the respondent to execute some documents for incorporation of their names in the registration record and again a family settlement took place in which it was decided by Ram Lal that the petitioner and his brother will make payment of Rs.5,00,000/- jointly in equal share to the respondent and her husband in lieu of change of name in the registration record regarding ground floor and accordingly he made payment of Rs.1,00,000/- to husband of the respondent in presence of respondent, Sh. Radha Krishan and one Mr. Parmod etc. but husband of the respondent refused to give the receipt on the pretext that same will be given at the time of final payment. After death of Ram Lal and value of property having increased manifold, the respondent and her husband did not accept remaining amount of Rs.4,00,000/- from the petitioner and his brother. Taking advantage of prevailing registration record and increase in price of property, the respondent filed the eviction proceedings out of greed and not of any need. He denied the averments with regard to his being liable to be evicted either on the ground of non-payment of rent or alleged necessity of husband of the respondent.

The controversy between the parties led to framing of following issues:-

1. Whether there is relationship of landlord and tenant between the parties? OPP
2. If issue No.1 is proved in favour of the petitioner, whether the respondent is liable to ground taken in the petition? OPP

3. Whether the petitioner has concealed the true and material facts from the Court? OPR

4. Relief.

1-A Whether the present petition is barred by principle of constructive res judicata? OPR

The parties were permitted to adduce evidence in support of their respective contentions. Having heard counsel for the parties in the light of materials on record, the Rent Controller dismissed the eviction application vide order dated 26.02.2014 that became subject matter of challenge in appeal, preferred by the respondent. As has been noticed hereinbefore, the appeal was allowed by the Appellate Authority and the petitioner is ordered to be evicted from the tenancy premises by answering the issue of relationship of landlady and tenant between the parties in favour of the respondent, therefore, petitioner being liable to be evicted on the ground of non-payment of rent w.e.f. 01.01.2008. The petitioner was directed to hand over vacant possession of demised premises to the respondent within one month.

Counsel for the petitioner Sh. Arun Jain, Senior Advocate has assailed the impugned order passed by the Appellate Authority on different counts. It is vehemently argued that plea of the respondent with regard to creation of tenancy in favour of the petitioner does not find corroboration from an independent source much less documentary evidence. It is argued that neither there is any rent note executed by the petitioner nor there is a document with regard to payment of rent by the petitioner or receipt of rent

by the respondent. It is further argued that in the application for eviction, it has not been specifically mentioned as to the date from which the tenancy commenced, the rate of rent at that time or the date from which the rent was enhanced to Rs.800/- per month. It has been argued that the respondent and her husband appeared in the witness box to prove relationship of landlord and tenant between the parties. Asha Rani – respondent in her cross examination had stated that initially rent of the shop was Rs.500/- and thereafter it became Rs.800/- but she did not remember when rent was increased to Rs.800/-. Dharam Pal, husband of Asha Rani had contradicted her statement as he deposed that in the year 1972, the rent was about Rs.200/- and thereafter in the year 1982 it was increased to Rs.500/- and in the year 1996 it was increased to Rs.800/-. It is vehemently argued that had it been true that tenancy was created in the year 1972 at the rate of Rs.200/- per month, there was no reason for Asha Rani not knowing the said fact and it is for this reason, Asha Rani had not given complete particulars of commencement of tenancy and rate of rent etc. in the eviction application.

Another submission made by counsel is that conduct of Asha Rani is not free from blemish and mala fide. To bring home his contention, it is argued that Asha Rani in collusion with Baldev Raj – petitioner filed an eviction application against Devi Saran tenant on the first and second floor of the property in question on the ground of subletting by Baldev Raj in favour of Devi Saran. It is further argued that eviction application filed by Asha Rani against Baldev Raj and Devi Saran qua first and second floor of building in question was dismissed by the

Rent Controller, Kaithal on 10.03.2005 and appeal preferred by Asha Rani was dismissed by the Appellate Authority, Kaithal vide order dated 24.08.2007 whereby the Courts have consistently held that Devi Saran was a direct tenant under Asha Rani and not a sub-tenant under Baldev Raj.

Counsel for the petitioner is fair enough to concede that Rent Controller is a Fora with limited jurisdiction to decide the issues under the Rent Act but would contend that as the respondent failed to prove relationship of landlord and tenant between the parties, the respondent cannot derive any advantage to her contention even if the petitioner has not been able to establish his ownership of ground floor on the basis of family settlement. It is further argued that question of title to a property cannot be decided by the Rent Controller and the same can be decided in appropriate proceedings before the Civil Court. According to counsel, the Appellate Authority has recorded contradictory findings by holding in para 47 of the judgment that onus is upon the petitioner (respondent therein) to establish that there does not exist relationship of landlady and tenant by relying upon judgments **Gurinder Singh and others Vs. Kundan Lal, 2005 (1) RCR (Rent) 332, Prith Pal Singh Vs. Hira Lal and others, 1987(2) Rent Law Reporter 378 and Roshan Lal Vs. Rehmati Ali, 2003 HRR 623.** It is further argued that the Courts below have rightly discarded document Ex.A2, petition filed before the Delhi High Court under the Companies Act containing no admission by the petitioner of his being a tenant in the shop in dispute under the respondent. The house tax assessment record in the shape of documents Ex.PX and PY for the year 1993-94 and 2000-01 can neither form the basis to establish plea with

regard to relationship of landlord and tenant between the parties nor to decide the question of rate of rent. In support of his contentions, he has relied upon judgments of this Court **Kamla Rani Vs. Inder Singh, 1986 (supp) RCR (Rent) 111; Satish Kumar Shanti Devi and others, 2008(3) RCR (Civil) 278, Om Parkash Rohila Vs. Sat Pal and another, 1992(2) RCR (Rent) 680, Sant Lal Vs. Prem Chandel (Smt.), 1996 (1) RCR (Rent) 322** and **Mohinder Singh Vs. Ram Nath, 1985(1) RCR (Rent) 642.**

Counsel representing the respondent, on the contrary, has supported the impugned order. It is argued with vehemence that the Appellate Authority, on a detailed consideration of the legal and factual aspects involved in the matter, has rightly arrived at a conclusion that there exists relationship of landlord and tenant between the parties. It is further argued that minor inconsistencies/ contradictions in the oral account given by the respondent and her husband pertaining to events that took place 30/40 years ago cannot be taken seriously. The petitioner has failed to give any convincing and logical explanation that if the father had allegedly purchased the property in the name of respondent out of love and affection, there was any reason for a family settlement to have taken place in the year 1972 itself conferring right of ownership qua ground floor on the petitioner and his brother Radha Krishan.

I have heard counsel for the parties, perused the paper-book and records.

Indisputably, the petitioner and respondent are real brother and sister. There is no dispute that title deed of the property in question is

in the name of respondent. The petitioner sought to raise the plea that this property was purchased by Sh. Ram Lal by incurring all the expenses but the sale deed was registered in the name of respondent out of love and affection. Sh. Ram Lal during his lifetime never challenged title of the respondent in respect of the property in question. The petitioner sought to claim ownership of ground floor of the property on the basis of family settlement that allegedly took place in the year 1972. The sale deed was executed in February 1972. It defies logic that if Sh. Ram Lal wanted to convey ownership right only qua part of the property in question in favour of the respondent, he would have got the sale deed executed in the exclusive name of respondent and thereafter making her to agree for a family settlement to give part of property to his sons. This apart, there is nothing on record suggestive of the fact that Sh. Ram Lal ever purchased any property in the names of his sons or he was owner of many properties and for that reason he thought of getting the property in question registered in the name of his daughter just out of love and affection more particularly in the circumstances that she was married more than 15 years before purchase was made in the year 1972 and she had no marital disharmony, rather was settled in her matrimony out of which she has four sons. I would hasten to add that this Court is not oblivious of the fact that the Rent Controller cannot decide the question of title/ownership of demised premises but in view of the plea raised by the petitioner in the reply, it became necessary to deal with contention of his becoming owner of the shop in question on the basis of family settlement or came in possession thereof on the said basis. The Appellate Authority has rightly rejected plea

of the petitioner with regard to his being in possession of demised premises on the basis of a family settlement.

Much stress has been laid by the petitioner in respect of failure of the respondent to give complete particulars of inception of tenancy, rate of rent fixed from time to time etc. In para 1 of the application for ejectment, it is averred that the petitioner is a tenant on the ground floor of double storeyed building bearing MCK No.402/18 on payment of monthly rent of Rs.800/- per month inclusive house tax. In reply to the application, no such objection was raised that the respondent has not given the complete details of inception of tenancy, rent at which tenancy was created etc. in order to give an opportunity to the respondent to explain the same by filing replication / rejoinder. Since the petitioner did not raise any such objection, he is deemed to have waived any such objection, therefore, he cannot seek any aid to his contention qua failure of the respondent to give all the details with regard to commencement of tenancy and change of rate of rent from time to time.

Counsel for the petitioner has tried to draw some benefit from the factum of plea of tenancy being not supported by any rent note/rent receipt etc. This Court cannot ignore that even in tenancies between strangers, rent note/rent deed is not the foundation for creation of tenancy. Similarly, in more than 50% cases, there would be no rent receipt as an evidence of rate of rent or payment of rent even in cases where there is no dispute with regard to relationship of landlord and tenant between the parties. In the case at hand, the parties are so closely related being real brother and sister. In the given scenario, it is not something unnatural or

abnormal that neither tenancy was created by a writing nor rent was increased through a written document. With regard to rent receipt, Dharam Pal PW-1 had stated that petitioner used to prepare receipts and get it signed from him and retained those receipts. No such fact has been elicited in cross examination of Dharam Pal and Asha Rani that any counter-foil of the receipt was maintained for production in the Court as an evidence of tenancy. In this view of the matter, the petitioner cannot be allowed to find fault in findings of the Appellate Authority for want of production of rent note or a document as an evidence of payment of rent.

Counsel has pointed out that there is discrepancy in the statements of Dharam Pal PW-1 and Asha Rani with regard to initial rent. The Appellate Authority in para 32 of the judgment has dealt with this aspect of the matter and has rightly held that Asha Rani stated in her cross examination that her husband had better knowledge about rate of rent as he had been dealing with collection of same by taking a view that it is normal in our society that male member of the family takes care of financial affairs viz-a-viz the females. As Sh. Dharam Pal had been playing an active role to manage the property and financial affairs of family, any such discrepancy in the statements of Dharam Pal and Asha Rani, highlighted by counsel for the petitioner, is of no consequence.

The oral version of Asha Rani and Dharam Pal with regard to tenancy of petitioner who is admittedly running business on the ground floor under the name and style of Akash Boot House gets substantiated from the documents pertaining to house tax assessment wherein in the house tax assessment registers Ex.PX and PY for the years 1993-94 and

2000-01, Akash Boot House is recorded in column of possession at the rate of Rs.150/- per month and the respondent is recorded to be owner of the property. These documents also record possession of Tailor Master at the rate of Rs.500/- per month and Devi Saran tenant on the first and second floor of the premises is stated to be tenant at the rate of Rs.500/- per month in the document (Annexure P-8) appended with the petition.

The respondent has placed on record certified copy of petition filed under Section 446(2) and 456 of Company's Act, admittedly filed by Baldev Raj before the Delhi High Court in October 1984 marked as Ex.A2. The Appellate Authority, in para 46 of the judgment has held that petition Ex.A2 does not contain any admission whereby the petitioner admitted to be tenant under the respondent in shop in dispute for the reasons recorded in the said para. I would like to point out that though in the said petition there is no specific reference to tenancy of ground floor but the petition was regarding property bearing No.424/11 situated on Railway Gate, Kaithal. In the head-note of the petition, it is mentioned, reads thus:-

“The humble petition of the undersigned lessee of the aforesaid property No.424/11 on Railway Gate, Kaithal”.

In the head-note, there is no reference that the petition is in respect of first floor of the aforesaid property. Similarly, in para 2 of the petition, it is mentioned that the applicant- Baldev Raj took the aforesaid property bearing No.424/11 situated on Railway Gate Kaithal on a monthly rent of Rs.1000/- per month from Asha Rani who is owner of the property. The present applicant got possession of the premises on 01.01.1984. In para 4, there is reference to visit of some persons on 06.06.1984 to the

premises in question, a shoe shop of the petitioner. It is averred that the petitioner Baldev Raj is running a shoe shop under the name and style of Akash Boot House on the ground floor of said premises at Railway Road, Kaithal. Para 4 also makes reference to lease of first floor of said premises by Asha Rani in favour of the petitioner and taking of possession of the same on 01.01.1984. At the same time, it remains a fact that the petitioner had not claimed his ownership of the ground floor of property bearing No.424/11 in the said petition.

Taking into account oral testimonies of Dharam Pal and Asha Rani coupled with entries in the house tax assessment register made way back in the year 1993-94 and 2000-01 along with the contents of petition Ex.A2 plus plea of the petitioner in respect of family settlement and is being given ownership right on the ground floor of the property in question (tenancy premises) having been rightly rejected by the Appellate Authority and confirmed by this Court, I do not find an error much less illegality in judgment passed by the Appellate Court that would call for intervention.

The Appellate Authority has rightly held that onus to prove relationship of landlord and tenant between the parties lies upon the eviction petitioner but the Court by relying upon judgments of this Court in **Gurinder Singh's case** (supra), **Prith Pal Singh's case** (supra) has held that the petitioner has failed to establish as to in what capacity he was occupying the premises once his plea of family settlement is not worthy of acceptance for the reasons recorded by the Appellate Authority. There cannot be dispute about settled position in law that it is for the eviction petitioner to establish relationship of landlord and tenant between the

parties in order to become successful to seek eviction on any of the grounds envisaged in the Rent Act. In case the initial burden to prove relationship of landlord and tenant is discharged by the eviction petitioner, the Court can certainly draw some inference from failure of the occupant to prove as to the capacity in which he is occupying the premises in question because in civil proceedings, the case is to be decided on the basis of balance of probabilities. This Court in **Gurinder Singh's case** (supra) has held in concluding para of the judgment that moreover the onus to prove the absence of relationship of tenant and landlord was on the tenant-petitioner. This observation of the Court cannot be read in isolation but needs to be read while taking a cumulative view of the facts and circumstances obtaining in a case. As an upshot of the discussion made hereinbefore, observations made by the Appellate Authority in para 47 of the judgment can neither be termed as contradictory nor these observations can constitute a ground for setting aside the impugned order by holding that the Appellate Authority has committed material irregularity or illegality by setting aside the order passed by the Rent Controller and allowing the application for eviction on the ground of non-payment of rent by reaching the conclusion that there exists relationship of landlord and tenant between the parties.

In view of what has been discussed hereinbefore, finding no merit, the petition fails and is accordingly dismissed with costs.

FEBRUARY 11, 2019

‘D. Gulati’

Whether speaking/reasoned :

Whether reportable :

(REKHA MITTAL)

JUDGE

yes/no

yes/no