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

CR-49-2019 (O&M)
Date of decision : 24.01.2020

Rakesh Puri

... Petitioner

Versus

Umesh Anand

... Respondent

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Atul Jain, Advocate
for the petitioner.

Mr. Inderjeet Singh, Advocate
for the respondent.

ALKA SARIN, J.

1. The present revision petition has been filed challenging the order dated 22.11.2018, whereby the application filed by the petitioner-landlord for leading secondary evidence has been dismissed.
2. The brief facts germane to the present *lis* are as under:-
3. The petitioner-landlord filed a petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (in short 'the Act') for ejectment of the respondent-tenant from the shop situated at Amritsar Road, Opposite Gurudwara Bawian, Near Shalimar Bagh, Kapurthala. In the petition, it was stated that the shop in question was earlier owned by Bhagwanti Parshad, father of the petitioner, who during his lifetime executed a registered Will dated 11.06.2001 creating a limited estate in favour of his wife i.e. Janak Rani, mother of the petitioner and after her, the

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said shop was to be inherited by the petitioner. Bhagwanti Parshad died on 19.04.2004 and Janak Rani on 11.04.2011 and hence, it has been claimed by the petitioner that he has become the absolute owner/landlord of the shop in question. The grounds for ejectment were of arrears of rent as also personal necessity for the petitioner's son, namely, Shubam Puri.

4. In the written statement filed by the respondent-tenant, the validity of the Will was challenged. During the pendency of the ejectment petition, the petitioner-landlord preferred an application to lead secondary evidence to prove the registered Will dated 11.06.2001 executed by his late father Bhagwanti Parshad.

5. It is stated by the petitioner-landlord that the original Will dated 11.06.2001 was in possession of his brother with whom the petitioner did not have cordial relations and hence, his brother had refused to hand over the original Will.

6. In reply to the said application, the stand taken by the respondent-tenant was that the Will dated 11.06.2001 was never executed and if such Will does exist, the same is forged and fabricated. Vide order dated 22.11.2018, the Rent Controller dismissed the application for secondary evidence primarily on the ground that question of title is not to be gone into in an ejectment petition.

7. I have heard learned counsel for the parties and am of the considered view that the present revision petition deserves to be allowed.

8. It is trite that question of title is not to be gone into in a rent proceeding. However, in the present case, the petitioner-landlord had sought to produce and prove the Will in his favour by way of leading secondary evidence, only to substantiate the pleadings that he had become

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the owner by way of a registered Will. The tenant, respondent in the present case, has no locus to challenge the validity of the Will as the same can only be challenged by the heirs of the testator or by any other person claiming share in the property of the testator. That being so, merely by permitting the petitioner-landlord to lead additional evidence regarding the existence of the registered Will dated 11.06.2001 in favour of the petitioner-landlord, would not amount to proving the Will. In order to prove a document by way of primary or secondary evidence, the procedure as envisaged in the Evidence Act, 1872, has to be followed and whether a party seeking the leave of the Court to lead secondary evidence ultimately succeeds in proving the document or not, is question of fact and would depend on the evidence led.

9. In view of above, the present revision petition is allowed and the order dated 22.11.2018 passed by the Rent Controller, dismissing the application for leading additional evidence is set aside.

24.01.2020
Yogesh Sharma

(ALKA SARIN)
JUDGE

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