

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

CR-3233-2008 (O&M)
Date of decision : 25.02.2020

Mohinder Pal

...Petitioner

Versus

Ajaib Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. R.K. Singla, Advocate for the petitioner.

Mr. Vikas Bahl, Sr. Advocate with
Ms. Aarzoo B. Garewal, Advocate for the respondents.

ANIL KSHETARPAL, J.

The present revision petition has been filed under Sub-Section 5 of Section 15 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter to be referred as "the 1949 Act"), challenging the correctness of order passed by the learned Rent Controller dated 09.05.2008 while ordering the ejectment of the petitioner-tenant.

The landlord-Ajaib Singh (respondent herein) had filed a petition under Section 13-B of the 1949 Act for ejectment of the tenant from the shop. The petition was filed through Sh. Satya Nand Aggarwal, Advocate. In para 2 of the petition, it was recited that the landlord/owner being a Non Resident Indian has appointed Palwinder Singh son of Harbans Singh as his attorney and authorized him to pursue the rent application.

It was further pleaded that the tenanted premises is required for bona fide requirement of the landlord who wishes to come back and settle in India. It was further claimed that previously, the respondent-landlord alongwith Kundan Singh and Gurdev Singh were joint owners of the total building in which elder brother Gurdev Singh has a share to the extent of 5 marlas 2 sarsai whereas respondent-landlord-Ajaib Singh alongwith Kundan Singh have got 4½ marlas each. There are three shops in the building and each brother has got one shop in the family partition which took place orally in the month of March, 1992.

The tenant was granted leave to contest. Thereafter, the tenant-petitioner filed reply contesting the bona fide requirement of the landlord. It was also alleged that the landlord does not wish to come back to India and previous petitions filed by the landlord alongwith his brother have also been dismissed. It was also disputed that the landlord is exclusive owner of the shop in question.

In the present case, learned trial Court framed issues on 15.10.2005 and thereafter the case was fixed for the evidence of the owner/landlord. On 05.12.2005, 17.01.2006, 13.03.2006, 15.05.2006, 24.07.2006 and 17.10.2006, no evidence was produced by the landlord. Thereafter, Anil Kumar, clerk working in the office of Sh. S.N. Aggarwal, the learned counsel representing the landlord, appeared in evidence on the basis of a power of attorney executed on 30.05.2006 attested by the Notary Public on 07.06.2006. In cross-examination, Anil Kumar has stated that he does not know much about the family of Ajaib Singh or his personal details. He also stated that he is acquainted with Ajaib Singh while working as clerk

of Sh. Satya Nand, Advocate and apart therefrom he has no other relationship. At this stage, it would be apt to reproduce the deposition of the witness in cross-examination:-

“Ajaib Singh is having three brothers. I do not know about their sister. I do not know whether the parents of Ajaib Singh are alive or dead. I am resident of Phillaur. I do not know the name of the wife of Ajaib Singh and how many children he is having and where he has married. I am 32 years of age. In the year 1992, I was 14 years of age. Partition relied upon Ajaib Singh. I am not witness to the same. Nor it was effected in my presence. And I am not having knowledge of this partition. I on the asking of Ajaib Singh state so as Ajaib Singh told about this to me. About this partition no writing was took place. No mutation was sanctioned in the basis of this partition. Chanchal Singh was the owner of land. I do not know from where Chanchal Singh purchase this land or it was his ancestral. We do not have any proof to the effect that Ajaib Singh is the sole owner of disputed shop. Volunteered partition was effected orally. Ajaib Singh had not given on rent the disputed property in my presence nor written rent. I do not know that after receiving rent from Mohinder Pal, Ajaib Singh issued any receipt or not. I do not know that Ajaib Singh and his brothers Kundan Singh and Gurdev Singh instituted ejectment petition 13-B or not. I do not know that earlier Ajaib Singh and his brother Kundan Singh, Gurdev Singh instituted Ejectment Petition 13-B or not. I do not know that earlier Section 13-B petition filed by Ajaib Singh, Gurdev Singh and Kundan Singh between respondent remained pending in this Court. I do not know that said petition was dismissed by Sh. S.K. Sharma RC J Phillaur and other Judges in favour of respondent. I have not asked Ajaib Singh about ejectment petition nor he told

about the site plan of the present case which is Ex.A-4. And the same do not bear my signature nor the same was prepared in my presence. Again said it was prepared in my presence. On the western side of the disputed property there are stairs and shop of Tarsem. All the three shops have been constructed in the entire premises. I can not say when these shops were constructed but these are very old. I can not say from how much year Mohinder Pal is tenant but he is of so many years. I can not say that Mohinder Pal is tenant for the last 40 years or not. Ajaib Singh etc. became owner of the property in dispute after the death of Chanchal Singh. I can not say when Chanchal Singh died. I do not know whether Chanchal Singh executed Will in their favour or not. At present I am not having the originally passport of Ajaib Singh. I have seen the passport on the day when the same was attested. But I can not say how many years has passed. I can not say how many times he had come and returned. On volunteered it is my hand written. I do not know whether entry of these affidavit was made by me in the register. I do not that Notary Public who attest documents. Entry in the register is there. I do not know whether Ajaib Singh has given affidavit to his brother or not. Ajaib Singh have appointed other person to be his attorney but the same has not been produced. I do not know the reason why the said attorney have not been produced. I do not know whether in my attorney this has been mentioned or not. In my presence property in dispute was never demarcated from which it could be attested that this is khasra no.1051. Volunteered disputed property is having khasra no.1051. I do not know which are the khasra number. In the fixed number there are three shops. I do not know what is constructed. I can not tell the length and breadth of khasra no.1051. His brothers are owners.

Questions:-

Q: Can you produced any documentary proof in the court to effect that Ajaib Singh is exclusive owner of the property in dispute?

A.: Two affidavits of Kundan Singh and Gurdev Singh proving the exclusive ownership have been placed as proof.

Q: Can you produce any sale deed or revenue record regarding the exclusive ownership of Ajaib Singh?

A: I can not produce any sale deed. However jamabandi has been produced.

Q: Can you after reading the jamabandi tell who is the owner?

A: Witness have been shown jamabandi Ex.A-5 in which Surjit Singh etc. are owners. And Ajaib Singh alone is not exclusive owner in the jamabandi. And Ajaib Singh is co-owner. Ajaib Singh came in India five years back. Again said in 2003 thereafter he came thrish/forth. And thereafter he also came in the year 2006. But I can not produce any proof about his arrival.

I do not know that behind this shop other constructed rooms are there or not. Ajaib Singh is above 65. I do not know whether Ajaib Singh is having any other property in the village. Ajaib Singh is having resident at Goraya. In this number the house is there. In which Ajaib Singh is having residence. I do not know whether Ajaib Singh is having voter card or ration card in India. And proof of residence in India. I do not know how many children is Ajaib Singh having. I do not know whether they are married or not. I do not whether they reside out side the house. I do not know where they were born. I do not know whether they are having Indian or British Passport. I do not know whether Ajaib Singh is receiving pension or does any business. In khasra no.1051 in jamabandi Ajaib Singh is share holder and khewat is

*joint. Nor it speaks about the exclusive possession. In the record of municipal committee Ajaib Singh and his brothers are owners. I have annexed photo copy of Power of Attorney. **I am Clerk to Satya Nand Advocate for the last 7/8 years. Satya Nand is counsel of Ajaib Singh. Entry of power of attorney was effected in the register.** I do not know who put his signature as attesting witness on the power of attorney and can tell after seeing the same. **I know Ajaib Singh only due to the reason that as client he comes to our Advocate and due to this our relation became co-ordial. I have no relationship with him.** I do not remember whether I am attorney of someone else also. I have not got power of attorney at the asking of my advocate. I do not know whether wife of Ajaib Singh is dead or alive. Again said is alive. Ajaib Singh have not told to me about earlier ejectment proceedings against Mohinder Pal. I was also not told that the said petition was dismissed. It is wrong to suggest that I have deposed falsely. It is also wrong to suggest that plaintiff in connivance with witnesses by creating false story filed this petition. It is also wrong to suggest that no partition has taken place about the disputed property. Nor Ajaib Singh is having right to file the present case. It is wrong to suggest that Ajaib Singh has not given me the produce power of attorney.”*

On careful reading of the aforesaid statement, it is apparent that the only witness who had appeared on behalf of the landlord, did not had knowledge of most of the facts. In a petition for ejectment on the ground of personal necessity, the landlord is required to establish that he bona fide requires the tenanted premises. Thus, most of the facts are in knowledge of the landlord. Hence, normally, it is expected that the landlord would himself appear in evidence and face cross-examination. The cross-examination of a

witness is important part of contesting a case. This gives an opportunity to the opposite party and his counsel to make an attempt to impeach the credibility of the statement given in chief. Therefore, it becomes important that the landlord steps in the witness box unless the power of attorney holder is closely related and has knowledge of the facts of the case. There can be cases where it is not possible for the landlord to appear himself. But those reasons for non-appearance have to be explained to the Court. In the present case as noticed above, the witness has failed to give any satisfactory reply while answering most of the questions. Thus, the statement of the aforesaid witness, who has appeared as a power of attorney holder, cannot be relied upon to record a finding that the requirement of the landlord is bona fide. At the cost of repetition, it must be noticed that Anil Kumar is only a clerk of the counsel through whom the petition was filed. Therefore, the aforesaid clerk has limited knowledge as has been disclosed by the landlord while engaging the counsel. The witness has admitted that he knows the landlord only on account of professional relationship. Hence, the evidence of such witness is not sufficient to record a finding that the landlord requires the premises bonafidely.

Although, it is correct that strict Rules of Code of Civil Procedure are not applicable to the rent proceedings, however, it is settled that general Rules of procedure as laid down in the Code of Civil Procedure are applicable. Order III Rule 1 of the Code of Civil Procedure, provide for appearance through a recognized agent or pleader; who are the recognized agent of the parties is provided under Order III Rule 2 of the Code of Civil Procedure. Further, Illustration (g) of Section 114 of the Indian Evidence

Act, provides that if the evidence which could be and is not produced, it will be safe to presume that if that evidence would have been produced, it would have been unfavourable to the person who withholds it. This doctrine is called rule of drawing adverse inference. This is based upon the Rules of production of best evidence. Once a person does not produce best evidence, then the Court is entitled to draw adverse inference presuming that the evidence which has been withheld if had been produced, would have gone against the person who withheld it.

This aspect has been considered by Hon'ble the Supreme Court in various judgments, however, reference to the one would be sufficient. In the case of **Man Kaur (dead) by LRs Vs. Hartar Singh Sangha, (2010) 10 SCC 512**, Hon'ble the Supreme Court while dealing with a suit for specific performance of agreement to sell, has concluded as under:-

“18. We may now summarise for convenience, the position as to who should give evidence in regard to matters involving personal knowledge:

(a) An attorney-holder who has signed the plaint and instituted the suit, but has no personal knowledge of the transaction can only give formal evidence about the validity of the power of attorney and the filing of the suit.

(b) If the attorney holder has done any act or handled any transactions, in pursuance of the power of attorney granted by the principal, he may be examined as a witness to prove those acts or transactions. If the attorney holder alone has personal knowledge of such acts and transactions and not the principal, the attorney holder shall be examined, if those acts and transactions have to be proved.

(c) The attorney holder cannot depose or give evidence in place of his principal for the acts done by the principal or

transactions or dealings of the principal, of which principal alone has personal knowledge.

(d) Where the principal at no point of time had personally handled or dealt with or participated in the transaction and has no personal knowledge of the transaction, and where the entire transaction has been handled by an attorney holder, necessarily the attorney holder alone can give evidence in regard to the transaction. This frequently happens in case of principals carrying on business through authorized managers/attorney holders or persons residing abroad managing their affairs through their attorney holders.

(e) Where the entire transaction has been conducted through a particular attorney holder, the principal has to examine that attorney holder to prove the transaction, and not a different or subsequent attorney holder.

(f) Where different attorney holders had dealt with the matter at different stages of the transaction, if evidence has to be led as to what transpired at those different stages, all the attorney holders will have to be examined.

(g) Where the law requires or contemplated the plaintiff or other party to a proceeding, to establish or prove something with reference to his 'state of mind' or 'conduct', normally the person concerned alone has to give evidence and not an attorney holder. A landlord who seeks eviction of his tenant, on the ground of his 'bona fide' need and a purchaser seeking specific performance who has to show his 'readiness and willingness' fall under this category. There is however a recognized exception to this requirement. Where all the affairs of a party are completely managed, transacted and looked after by an attorney (who may happen to be a close family member), it may be possible to accept the evidence of such attorney even with reference to bona fides

or 'readiness and willingness'. Examples of such attorney holders are a husband/wife exclusively managing the affairs of his/her spouse, a son/daughter exclusively managing the affairs of an old and infirm parent, a father/mother exclusively managing the affairs of a son/daughter living abroad."

From a careful reading of the aforesaid, it is apparent that once the party does not himself appear and the power of attorney holder who has been appointed to appear on behalf of the party, does not know most of the facts, the Courts are justified in drawing an adverse inference.

In the present case, learned Rent Controller has erred while failing to draw adverse inference against the owner/landlord. It may be significant to note that learned counsel for the tenant had prayed to the Court for drawing adverse inference while drawing attention that Anil Kumar is a clerk of the counsel. However, learned Rent Controller even failed to deal with the aforesaid contention of learned counsel for the tenant.

Keeping in view the aforesaid facts, this Court is of the considered view that the order passed by the learned Rent Controller cannot be sustained. Hence, it is set aside.

Accordingly, the present revision petition is allowed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

25.02.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No