

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 6573 of 2016 (O&M)

Date of Decision: 11.03.2022

Gordhan Dass

... Petitioner(s)

Versus

Shakuntla Devi

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Pawan Kumar, Senior Advocate
with Mr. Surya Kumar, Advocate
for the petitioner(s).

Mr. Amit Jain, Senior Advocate
with Mr. Varun Parkash, Advocate
for the respondent.

Anil Kshetarpal, J.

1. The petitioner is a tenant. He was ordered to be evicted by the Rent Controller as well as the Appellate Authority. The respondent is a landlady. She has filed a petition seeking eviction of the petitioner on the ground of personal necessity as she retired as a Teacher and thereafter, she wants to establish her coaching centre on the tenanted premises. The petition was filed in the year 2013. The tenant contested the petition alleging that the landlady does not have a bonafide requirement and the petition has been filed with a malafide intention. It was also asserted that the previous petition, filed by her son-Rajesh Kumar, in which she was the proforma respondent, was dismissed on 24.05.2013.

2. Both the Rent Controller as well as the Appellate Authority have already found merit in the petition, filed by the landlady.

3. Heard the learned senior counsel representing the parties and with their able assistance, perused the judgments, passed by both the Courts below, along with the record, which was requisitioned.

4. The learned senior counsel representing the petitioner contends that in the previous petition, filed by Rajesh Kumar (the respondent's son), was dismissed on 24.05.2013, therefore, the present petition is bared by the provisions of *res judicata*. He further contends that in fact, Rajesh Kumar, son of Smt. Shakuntla Devi, is the landlord, therefore, the eviction petition was not maintainable.

5. Per contra, the learned senior counsel representing the landlady, while drawing the attention of the Court to the judgment passed, while deciding the previous eviction petition, contends that the petitioner had himself taken a stand that now, Smt. Shakuntla Devi (the respondent herein) has become owner and the landlady; he is now making payment of the rent to her and she is issuing the rent receipts. He further contends that the previous petition was dismissed on the ground that Rajesh Kumar had failed to establish the relationship of the landlord and the tenant.

6. The previous judgment, passed in the petition filed by Rajesh Kumar, is Ex.A9. It is evident that the petitioner took a stand that Smt.Shakuntla Devi (the respondent herein) is his landlady and he is paying rent against the receipts. Furthermore, when the eviction petition was filed by Smt.Shakuntla Devi, claiming to be the landlady, the petitioner did not dispute that fact. Moreover, the petitioner has never objected to the maintainability of the petition before the Courts below on the aspect of questioning the relationship of the landlady and the tenant between the

respondent and the petitioner. The petitioner, for the first time in this Court, cannot be permitted to take up a new ground. Further, on repeated questions of the Court, the learned senior counsel representing the petitioner has failed to draw the attention of the Court to any documentary evidence to prove that the exclusive owner of the property of the tenanted premises is Rakesh Kumar, the other son of the respondent.

7. The petitioner cannot be permitted to approbate and reprobate, simultaneously.

8. In view of the above, no ground is made out to interfere. Hence, the present revision petition is dismissed.

9. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

March 11, 2022
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No