

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

239

CR-1835-2016 (O&M)

Date of Decision: 11.10.2023

Suresh Kumar (since deceased) through his LRs

...Petitioner(s)

Versus

Davinder Kumar and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. S.S. Bajaj, Advocate for the petitioner.

Mr. Ashish Setia, Advocate and

Mr. Surinder Singh, Advocate for the respondent-landlord.

HARKESH MANUJA, J. (oral)

CM-11207-CII-2022

Prayer in the application moved on behalf of applicant-respondent No.1, is for bringing on record the legal representatives of deceased-petitioner.

Notice of the application.

Learned counsel for the non-applicant-petitioner accepts notice.

For the reasons mentioned in the application, the same is **allowed**, subject to all just exceptions and the applicants as mentioned in paragraph 3 of application are ordered to be impleaded as LRs of deceased-petitioner in order to pursue the present case.

Amended memo of parties be taken on record.

Registry to do the needful.

CM-11208-CII-2022

Prayer in the application under Section 151 CPC moved on behalf of applicant-respondent No.1 is for directing the LR's of the petitioner to deposit the mesne profits @ Rs.22,000/- per month for use and occupation of the shop during the pendency of revision petition.

At this stage, learned counsel for applicant-respondent No.1/landlord submits that on instructions, he does not intend to press the present application, however, reserving his rights to move again in the changed circumstances.

Dismissed being not pressed.

Main case:

1. By way of the present revision petition, challenge has been made to the judgments dated 24.04.2014 and 30.11.2015, passed by the Rent Controller, Jalandhar as well as by the Appellate Authority, Jalandhar, respectively, whereby the eviction petition filed by respondent No.1-landlord has been allowed.

2. Briefly stating, respondent No.1-landlord claiming himself to be owner of shop bearing No. NK.142 Mohalla Charanjit Pura, Jalandhar having purchased the same vide registered sale deed dated 29.08.2001, filed eviction petition against the petitioner as well as proforma respondents-tenants. In eviction petition, rate of rent pleaded was of Rs.1500/- per month and the eviction was sought on the grounds of arrears of rent, personal necessity of respondent No.1-landlord besides the tenants having impaired the value and utility of demised

premises. It was also pleaded that the factum of respondent No.1/landlord having purchased the demised premises was brought to the notice of petitioner-tenant and he was asked to pay rent @ Rs.1500/- per month whereas in response, the tenants paid rent for some time but thereafter, stopped the same. Despite repeated requests tenants did not pay the rent resultantly legal notices dated 30.10.2007 and 19.11.2007 were served upon them but to no avail thus by compelling the filing of eviction petition.

3. Upon notice, the tenants appeared and filed written statement by opposing the claim made in the eviction petition while stating that the rate of rent was Rs.30/- per month. The relationship of landlord and tenant was denied while submitting that no notice about the property having been purchased by respondent No.1-landlord was ever served upon them. It was also stated that the shop being run by the father of respondent No.1-landlord was huge enough to accommodate him in the business and thus no case for *bonafide* necessity was made out.

4. The Rent Controller vide judgment dated 24.04.2014 passed eviction order against the tenants on the ground of arrears of rent as well as personal necessity of respondent No.1. Aggrieved thereof, an appeal was filed, however, the same was dismissed by the Appellate Authority vide judgment dated 13.11.2015, thereby upholding the eviction order.

5. Impugning the aforementioned judgments passed by the Authorities below, learned counsel for the petitioner submits that after having adjudicated upon the rate of rent, the authorities below did not provide any opportunity to the petitioner-tenant for deposit of arrears of rent especially in view of the fact that respondent No.1-landlord failed to prove the communication about his ownership to the tenants by virtue of legal notices dated 30.10.2007 and 19.11.2007. It has also been submitted that the sale deed dated 29.08.2001 vide which respondent No.1-landlord allegedly purchased the demised premises was never produced in original and only a certified copy thereof was produced on record. He further submits that respondent No.1-landlord was having well established business in the adjoining premises which he was running alongwith his father and thus, the necessity of the demised premises as pleaded in the eviction petition was mere wish.

6. On the other hand learned counsel for respondent No.1-landlord submits that demised premises having been purchased by respondent No.1-landlord from the previous owner, namely, Ramesh Chander was admitted by the petitioner-tenant while appearing as RW-2 and thus, the non-production of original sale deed dated 29.08.2001 was immaterial. As regards the intimation of transfer of title qua demised premises in favour of respondent No.1-landlord, the said fact was duly conveyed to the tenants in the presence of AW-2/Mohinder Singh and AW-3/Pardeep Kumar. As regards the *bonafide* requirement, learned counsel for respondent No.1-landlord submits that respondent

No.1-landlord intends to expand his business and in that course the demised premises was required by him.

7. I have heard learned counsel for the parties and gone through the paper book. I do not find substance in the submissions made on behalf of the petitioner.

8. In the present case, the demised premises was purchased by respondent No.1-landlord from its previous owner, namely, Ramesh Chander, vide registered sale deed dated 29.08.2001. Although the original sale deed could not be produced on record, but a certified copy thereof was duly proved on record as AW-4/A which read in conjunction with the admission of transfer made by RW-3-petitioner himself in his cross-examination established the plea of purchase of demised premises by respondent No.1-landowner. As regards the intimation thereof to the tenants, two witnesses from the side of respondent No.1-landlord appeared as AW-2 and AW-3, who categorically deposed that intimation regarding change of ownership was conveyed to the petitioner in their presence, however, to this oral intimation no suggestion in rebuttal to counter their assertion was put to either of the two witnesses in their cross-examination which means that the said part of statement was admitted being not rebutted. In view of the above stated facts & discussion, no illegality or perversity can be found with the judgments passed by the Authorities below while having denied opportunity to the petitioner-tenant as regards deposit of arrears

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of rent once he having disputed the relationship of landlord and tenant, besides even disputing the title of respondent No.1-landlord as well.

9. As regards the *bonafide* necessity of respondent No.1-landlord, it has been duly proved on record that though he has been working alongwith his father in the adjoining shop, yet he intends to start his own separate establishment so as to expand his business and excel in life. A landlord who is already running a business with his father cannot be denied eviction of tenanted premises on the ground that his intent to set up his own separate business is not *bonafide*. Every individual has a right to take strides in life & the said opportunity cannot be curtailed at the instance of a tenant to whom right of restitution is always available in terms of Section 13(5) of the East Punjab Urban Rent Restriction Act, 1949.

10. In view of the discussion made herein above, finding no illegality or perversity in judgments dated 24.04.2014 and 30.11.2015 passed by the Rent Controller, Jalandhar as well as by the Appellate Authority, Jalandhar, there being no misreading of pleadings or evidence available on record, present revision petition is hereby **dismissed**.

11. Pending application(s), if any, shall stand(s) disposed off.

11.10.2023

Mangal Singh

(HARKESH MANUJA)
JUDGE

Whether Speaking / Reasoned :	Yes	No
Whether Reportable :	Yes	No