

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

CR-4987-2015 (O&M)

Pronounced on : 23.08.2023

Reserved on 02.08.2023

Tehal Singh

..... Petitioner

Versus

Harnam Kaur and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present : Mr. Anand Chhibbar, Senior Advocate with
Mr. Karan Vir Nanda, , Advocate and
Ms. Khyati, Advocate
for the petitioner.

Mr. B.S.Patwalia, Advocate and
Mr. Akshit Pathania, Advocate
for respondents No.1 and 2.

Mr. Kanwaljit Singh, Senior Advocate with
Ms. Neha Anand Mahajan, Advocate
for respondent No.3.

None for respondents No.4 to 6.

VIKRAM AGGARWAL, J

CM-21895-CII-2015

Prayer in the present application filed under Order 22 Rules 10 and 11 CPC is for arraying the applicant Mukesh Kumar as party-respondent No.3 in the main petition.

It has been averred in the application that during the pendency

of the case, the applicant had purchased 15% share of the tenanted

premises from previous respondents No.3 to 5 i.e. legal representatives of Sh. Varinder Singh vide registered sale deed dated 25.08.2015 (Annexure A-1), (presently proforma respondents No.4 to 6) and had become a co-owner of the tenanted premises. This application was filed as far back as on 28.09.2015 and vide order dated 13.10.2015, it was ordered that the said application will be taken up with the main case.

Arguments in this application were heard. Since none of the non-applicants had any objection to the prayer made in the present application, the same is allowed. Applicant Mukesh Kumar is impleaded as party-respondent No.3 in the main petition. Amended memo of parties is taken on record.

CR-4987-2015 (O&M)

1. The present revision petition assails the order dated 30.05.2015, passed by the Rent Controller, Chandigarh vide which the eviction petition filed by respondents No.1 and 2 (hereinafter referred to as 'the respondents-landlords') under Section 13-B of the East Punjab Rent Restriction Act, 1949 as applicable to the Union Territory, Chandigarh (hereinafter referred to as 'the Rent Act') seeking eviction of the petitioner-tenant from Bay Shop No.1121-D, Sector 22-B, Chandigarh (hereinafter referred to as 'the tenanted premises') was allowed and the petitioner-tenant was directed to hand over the vacant possession of the tenanted premises to the respondents-landlords within a period of two months.

2. The tenanted premises was allotted to one Late Sh. Balwant Singh (husband of respondent No.1 Harnam Kaur and father of respondent No.2 Devinder Singh Marwaha) by the Chandigarh Administration on 07.02.1984. Sh. Balwant Singh expired on 12.08.1986 after which his

legal representatives succeeded to his estate. Sh. Balwant Singh was survived by his widow Harnam Kaur and three sons namely Devinder Singh, Tajinder Singh and Varinder Singh as also one daughter Ms. Anju Bala. The petitioner-tenant was inducted in the tenanted premises as a tenant by Smt. Harnam Kaur vide lease deed dated 18.06.1987. The lease deed renewed from time to time. Respondent No.2 is stated to have shifted to England in the year 1995 and is stated to have acquired citizenship in 2001. He, therefore, claimed to be an NRI (Non-Resident Indian), as defined under Section 2 (dd) of the Rent Act.

3. A petition was filed under Section 13-B of the Rent Act for eviction of the petitioner-tenant from the tenanted premises on the ground that respondent No.2 Devinder Singh Marwaha, who had been working at a petrol station in England, had suffered losses on account of recession and wanted to come back to India and intended to settle here so that his children could acquire the Indian values and traditions. It was averred that the whole family including all co-owners had decided that respondent No.2 would shift to India and would start a restaurant/fast food joint from the tenanted premises to which all the co-owners had duly consented. It was averred that the tenanted premises was located at a very favourable location from the point of view of running of a restaurant/fast food joint on account of there being several restaurants/hotels in the vicinity.

4. Upon notice having been issued, an application was preferred by the petitioner-tenant under Section 18-A of the Rent Act seeking leave to contest the petition. It was averred that the respondents-landlords had not approached the Court with clean hands and had filed the eviction petition on the basis of false, misconceived and concocted averments. It

was averred that the petition did not fall under the ambit of Section 13-B of the Rent Act. It was also averred that there were many triabal issues which could only be proved by evidence. Apart from other grounds, it was averred that respondent No.1 Harnam Kaur was not a Non-Resident Indian and the lease deed had duly been registered and executed with her. It was also averred that the tenanted premises had been allotted to devolved upon all legal representatives. It was averred that the bonafide necessity as depicted in the eviction petition was not true and had simply been created for seeking eviction of the petitioner-tenant. It was also averred that though the tenanted premises had devolved upon all legal representatives, the eviction petition had been filed by Harnam Kaur and Devinder Singh Marwaha with a view to take benefit of Section 13-B of the Rent Act.

5. During the pendency of the eviction petition, an application under Order 1 Rule 10 read with Section 151 CPC was filed by the legal representatives of Varinder Singh to implead them as petitioners, being necessary parties. It was averred in the application that under the garb of the petition, the respondents-landlords may try to occupy the entire shop despite the fact that Varinder Singh was also a co-owner of the said property. It was averred that they also required the tenanted premises for their bonafide necessity. It was averred that the applicants, being the co-owners of the tenanted premises had every right to join the petition.

6. The application was initially opposed by the respondents-landlords by way of a reply. It was averred that the share of the applicants was only 15% and not 20% as projected in the application. It was also averred that another co-owner namely Tejinder Singh had expired on

06.11.2014 and had left only Harnam Kaur as his legal representatives since Tejinder Singh was unmarried. Under the circumstances, Harnam Kaur and Devinder Singh Marwaha had become the co-owners of 85% share since Ms. Anju Bala had relinquished her share in favour of her mother. It was averred that the respondents-landlords had no intention to grab the share of the applicants and infact they would be protecting their rights. The said application is stated to have been allowed on 20.02.2013.

7. Subsequently, the proforma respondents No.4 to 6 filed another application for dismissing the petition as the same had been filed without their consent which was decided alongwith the eviction petition.

8. The application seeking leave to contest the eviction petition was declined and the eviction petition was allowed by the Rent Controller, Chandigarh vide impugned judgment dated 30.05.2015, leading to the filing of the present revision petition.

9. I have heard learned counsel representing the parties and, with their assistance, have gone through the record of the case.

10. Initiating arguments, learned Senior counsel on behalf of the petitioner-tenant submitted that the Rent Controller gravely erred in allowing the eviction petition and dismissing the application seeking leave to contest the eviction petition. The thrust of the arguments was on the point that the eviction petition had been filed by Harnam Kaur and Devinder Singh Marwaha without seeking the consent of the other co-owners and, therefore, eviction could not have been ordered. It was contended by learned Senior counsel that since there were a number of triable issues and the petition had not been filed with the consent of all the co-owners, the matter deserves to be remanded to the Rent Controller for

being tried and decided afresh. Reference was made to various parts of the eviction petition, the application moved under Section 18-A of the Rent Act, the application under Order 1 Rule 10 CPC, the application for dismissal of the eviction petition as also the impugned order dated 30.05.2015 to point out that the respondents-landlords had misrepresented that they had the consent of all co-owners whereas actually the consent was not there. Learned Senior Counsel submitted that the Rent Controller did not give the findings on facts and it jumped to conclusions. Learned Senior Counsel contended that once it was proved on record that the co-owners had raised an objection to the eviction petition, the same could not have been allowed. In support of his contentions, learned Senior counsel placed reliance upon the judgment of Hon'ble Supreme Court of India in **Mangal Builders & Enterprises Limited & Anr. versus Williamson Magor & Company Ltd. & Anr. 2017 SCC Online SC 2133** as well as the judgment of a Coordinate Bench of this Court in **Gyan Aggarwal versus Brij Bhushan Salwan in CR-11649-2018, decided on 06.03.2019.**

11. Learned Senior counsel submitted that the Rent Controller also noticed the objection. The Rent Controller held that though the argument was not maintainable as it had not been pleaded, he would take the same into consideration and then wrongly went on to hold that no objection had been raised by the other legal representatives to the eviction petition and, therefore, the same did not deserve to be rejected on account of the said fact.

12. Sh. Kanwaljit Singh, learned Senior Counsel representing respondent No.3, who is none else than the son of the petitioner-tenant and who had purchased 15% of the tenanted premises from the legal

representatives of Varinder Singh, has argued on same lines as that of learned Senior counsel for the petitioner-tenant. He infact, adopted the arguments addressed by learned Senior counsel representing the petitioner-tenant. In addition to the arguments addressed by learned Senior counsel representing the petitioner-tenant, learned Senior counsel for respondent No.3 submitted that the respondents-landlords were aware of the provisions of law and it is for this reason that averments were made in the eviction petition with regard to the co-owners having no objection to the same. Reference was made to various pleadings. Pointed reference was made to the averments made in the application filed by the legal representatives of Varinder Singh under Order 1 Rule 10 CPC. Reference was also made to the reply submitted to the said application and para 5 thereof wherein it was averred that the legal representatives of Varinder Singh had only 15% share and the remaining 85% share was with the respondents-landlords. Learned Senior counsel submitted that no document was placed on record to prove the averments made in the said paragraph, in the absence of which the averments could not have been accepted. Learned Senior counsel submitted that keeping in view the provisions of Section 18-A of the Rent Act, leave to defend should have been granted to the petitioner-tenant to contest the eviction petition. It was submitted that the impugned order deserves to be set aside and the matter should be directed to be retried after granting leave to defend to the petitioner-tenant to contest the eviction petition. Learned Senior Counsel placed reliance upon the judgment of Hon'ble Supreme Court of India in

M/s India Umbrella Manufacturing Co. and others versus

Bhagabandei Agarwalla (Dead) by Lrs. Smt. Savitri Agarwalla 2004 (1)
R.C.R. (Civil) 686.

13. Mr. B.S.Patwalia, Advocate, representing the respondents-landlords controverted the submissions made by learned counsel for the petitioner-tenant and respondent No.3. Learned counsel submitted that there is no illegality in the order passed by the Rent Controller. Reliance was placed upon the judgment of Hon'ble Apex Court in **M/s India Umbrella Manufacturing Co. and others versus Bhagabandei Agarwalla (Dead) by Lrs. Smt. Savitri Agarwalla's case (supra)** and it was submitted that respondent No.3 would continue to be a tenant even after his having purchased 15% share from the legal representatives of Varinder Singh. Learned counsel submitted that no objection had been raised to the eviction petition at any point of time by any one including Varinder Singh and that objection was raised only subsequently by his legal representatives and infact, even they had also not raised an objection but had simply wanted to be impleaded as petitioners. Learned counsel submitted that since Varinder Singh had expired in 2012 and the application for impleadment was moved by his legal representatives in 2014, the respondents-landlords did not object to their being impleaded as parties since no objection had been raised by them to the eviction petition. Learned counsel submitted that even in the application filed for dismissal of the eviction petition, no objection was raised. Learned counsel submitted that infact consent of Varinder Singh was not at all required. Learned counsel also submitted that respondent No.3 had filed a suit for partition. However, he was deliberately not paying the process fee and the suit is pending since 2017. It was also submitted that an eviction had also been

filed by the legal representatives of Varinder Singh against Tehal Singh . However, the same was got dismissed in default. Learned counsel submitted that the conduct of the petitioner-tenant and that of respondent No.3 would go on to show that the only endeavor is to hold on to the tenanted premises by taking one objection or the other. In support of his contentions, learned counsel for the respondents-landlords relied upon the judgment of the Hon'ble Supreme Court of India in **Mohinder Prasad Jain versus Manohar Lal Jain 2006 (2) SCC 724**, the judgments of Coordinate Benches of this Court in **Harjit Singh versus Harcharan Singh 2021 (2) R.C.R. (Rent) 545, Krishna @ Kishan Chand (deceased) through LRs versus Gurdial Singh and others 2019 (1) PLR 168, Lucky Kumar (since deceased) versus Manjinder Singh and another in CR-4125 of 2019, decided on 18.05.2022, Arun Kumar versus Gurcharan Singh 2017 (2) R.C.R. (Rent) 37, Amarjit Singh versus Gurcharan Singh Minhas & ors. 2014 (1) R.C.R. (Rent) 370, M/s Satpal Vijay Kumar versus Sushil Kumar 2011 (2) R.C.R.(Civil) 82, Ram Pal Thukral versus Jagjit Singh and another 2009 (4) R.C.R. (Civil) 329, Ravi Kumar versus Chaman Lal Chohan 2020 (2) R.C.R. (Rent) 497, Smt. Prabha Sehgal and others versus Shri Subhash Sagoonja and others 2018 (2) R.C.R. (Rent) 599, Paramjeet Singh versus Ranjeet Singh 2020 (2) R.C.R. (Rent) 474** and the judgments of Delhi High Court in **Shaheen Begum versus Sairo Bano 2022 (2) R.C.R. (Rent) 237 and Rahul Arora versus Ashok Chadha 2022 (2) R.C.R. (Rent) 310.**

14. I have given my thoughtful consideration to the arguments addressed by learned counsel for the parties.

15. Before adverting to the merits of the case, it would be appropriate to refer to the statutory provisions.

Section 13-B of the Rent Act lays down as under:-

[13B. Right to recover immediate possession of residential building or scheduled building and/or non-residential building to accrue to Non-resident Indian.] - (1) Where an owner is a Non-Resident Indian and returns to India and the residential building or scheduled building and/or non-residential building, as the case may be, let out by him or her, is required for his or her use, or for the use of any one ordinarily living with and dependent on him or her, he or she, may apply to the Controller for immediate possession of such building or buildings, as the case may be :

Provided that a right to apply in respect of such a building under this Section, shall be available only after a period of five years from the date of becoming the owner of such a building and shall be available only once during the life time of such an owner.

(2) Where the owner referred to in sub-section (1), has let out more than one residential building or scheduled building and/or non-residential building, it shall be open to him or her to make an application under that sub-section in respect of only one residential building or one scheduled building and/or one non-residential building, each chosen by him or her.

(3) Where an owner recovers possession of a building under this Section, he or she shall not transfer it through sale or any other means or let it out before the expiry of a period of five years from the date of taking possession of the said building, failing which, the evicted tenant may apply to the Controller for an order directing that he shall be restored the possession of the said building and the Controller shall make an order accordingly.

Further, Section 18-A of the Rent Act lays down as under:-

[18A. Special procedure for disposal of applications under Section 13-A or Section 13-B.] - (1) Every application under [section 13-A or section 13-B] shall be dealt with in accordance with the procedure specified in this section.

(2) After an application under [section 13-A or section 13-B] is received, the Controller shall issue summons for service on the tenant in the form specified in Schedule II.

(3) (a) The summons issued under sub-section (2) shall be served on the tenant as far as may be in accordance with the provisions of Order V of the First Schedule to the Code of Civil Procedure, 1908. The Controller shall in addition direct that a copy of the summons be also simultaneously sent by registered post acknowledgement due addressed to the tenant or his agent empowered to accept the service at the place where the tenant or his agent actually and voluntarily resides or carries on business or personally works for gain and that another copy of the summons be affixed at some conspicuous part of the building in respect whereof the application under [section 13-A or section 13-B] has been made.

(b) When an acknowledgement purporting to be signed by the tenant or his agent is received by the Controller or the registered article containing the summons is received back with an endorsement purporting to have been made by a postal employee to the effect that the tenant or his agent has refused to take delivery of the registered article and an endorsement is made by a process server to the effect that a copy of the summons has been affixed as directed by the Controller on a conspicuous part of building and the Controller after such enquiry as he deems fit, is satisfied about the correctness of the endorsement, he may declare that there has been a valid service of the summons on the tenant.

(4) The tenant on whom the service of summons has been declared to have been validly made under sub-section (3), shall have no right to contest the prayer for eviction from the [residential building or scheduled building and/or non residential building], as the case may be, unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller as hereinafter provided, and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the specified landlord or, as the case may be, the widow, widower, child, grandchild or the widowed daughter-in-law of such specified landlord [or the owner, who is non resident Indian] in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction of the tenant.

(5) The Controller may give to the tenant leave to contest the application if the affidavit filed by the tenant discloses such facts as would desentitle the specified landlord or, as the case may be, the widow, widower, child, grand- child or widowed daughter-in-law [or the owner, who is non resident Indian] of such specified landlord from obtaining an order for the recovery of possession of the [residential building or scheduled building and/or non residential building], as the case may be, under [section 13-A or section 13-B].

(6) Where leave is granted to the tenant to contest the application, the Controller shall commence the hearing on a date not later than one month from the date on which the leave granted to the tenant to contest and shall hear the application from day-to-day till the hearing is concluded and application decided.

(7) Notwithstanding anything contained in this Act, the Controller shall while holding an inquiry in a proceeding to which this section applies including the recording of evidence, follow the practice and procedure of a Court of Small Causes.

(8) No appeal or second appeal shall lie against an order for the recovery of possession of any [residential building or scheduled building and/or non residential building] made by the Controller in accordance with the procedure specified in this Section :

Provided that the High Court may, for the purpose of satisfying itself that an order made by the Controller under this section is according to law, call for the records of the case and pass such order in respect thereto as it thinks fit.

(9) Save as otherwise provided in this section, the procedure for the disposal of an application for eviction under [section 13- A or section 13- B] shall be the same as the procedure for the disposal of applications by the Controller.

16. The eviction petition was filed by Smt. Harnam Kaur and Devinder Singh Marwaha, widow and son of Late Sh. Balwant Singh respectively. Sh. Balwant Singh was the original owner of the tenanted premises. He expired intestate on 12.08.1986. He was survived by his wife Smt. Harnam Kaur, three sons namely Devinder Singh, Tajinder Singh and Varinder Singh and one daughter Ms. Anju Bala. It is an admitted fact that the tenanted premises was mutated in favour of all five legal representatives. Sh. Tehal Singh was the original tenant in the tenanted premises and had been inducted as such on 18.06.1987. The eviction petition was instituted in the year 2011. It is no longer res integra that an eviction petition can be maintained by even one landlord where there are more than one. Further, in so far as the co-owners are concerned, it is also well settled that a suit or an eviction petition filed by one co-owner would also be maintainable, provided the other co-owners would not have any objection to the same. Reference in this regard can be made to the

judgment of the Hon'ble Apex Court in **Mohinder Prasad Jain versus Manohar Lal Jain's case** (supra) wherein it was held as under:-

“A suit filed by a co-owner, thus, is maintainable in law. It is not necessary for the co-owner to show before initiating the eviction proceeding before the Rent Controller that he had taken option or consent of the other co-owners. However, in the event, a co-owner objects thereto, the same may be a relevant fact. In the instant case, nothing has been brought on record to show that the co-owners of the respondent had objected to eviction proceedings initiated by the respondent herein. The submission of the learned counsel for the appellant to the effect that before initiating the proceedings, the appellant was required to show that he had experience in running the business in Ayurvedic medicine, has to be stated to be rejected. There is no law which provides for such a pre-condition. It may be so where a licence is required for running a business, a statute may prescribe certain qualifications or pre-conditions without fulfilment whereof the landlord may not be able to start a business, but for running a wholesale business in Ayurvedic medicine, no qualification is prescribed. Experience in the business is not a pre-condition under any statute. Even no experience therefor may be necessary. If the respondent has proved his bona fide requirement to evict the appellant herein for his own purpose, this Court may not, unless an appropriate case is made out, disturb the finding of fact arrived at by the Appellate Authority and affirmed by the High Court.”

17. In the event of an objection raised by any of the co-owners, the issue would be different. The maintainability of an eviction petition by a Non Resident Indian in terms of the provisions of Section 13-B of the Rent Act, the grounds on which leave to defend can be granted and the circumstances where such leave is warranted are also now well defined

and delineated. Reference can be made to the judgment of the Hon'ble Apex Court in the case of **Baldev Singh Bajwa versus Monish Saini (2005) 12 SCC 778** (supra), the conclusion whereof may be summarized as follows:-

- (i) any person who is of an Indian origin, and who has settled either permanently or temporarily outside India for taking up employment; or for carrying on a business or vocation outside India either permanently or temporarily for taking up employment or for carrying on business/vocation would be a Non-Resident Indian;
 - (ii) a Non-Resident Indian-landlord has a special right to seek immediate possession of the let-out premises if he is its owner for atleast a period of 5 years before his applying to the Rent Controller for possession and that he requires the premises for his own use and occupation and/or for anyone ordinarily living with him and is dependent on him;
 - (iii) the right under Section 13B of the Act for immediate possession can be availed of only once during the life-time of such an owner/NRI landlord;
 - (iv) the NRI-landlord has the choice to select one amongst several other residential/non-residential buildings;
 - (v) it is not necessary for a NRI-landlord to permanently return to India for seeking eviction of the tenant;
- the Courts shall presume that the need of the NRI landlord is genuine and bonafide, though the tenant is entitled to prove that in fact and in law, the requirement of the NRI landlord is not genuine;
- (vii) a heavy burden would lie on the tenant to prove that the requirement of the NRI-landlord is not genuine and mere assertion on the part of the tenant would not be sufficient to rebut the strong presumption in the landlord's favour;

(viii) if the NRI-landlord gets possession under Section 13B of the Act, he can neither transfer it either by sale or by any other mode nor can he let it out for a period of 5 years and in case of any breach, the tenant is entitled to seek restoration of possession;

(ix) after getting the possession, the NRI-landlord should occupy the premises continuously for a period of 3 months.”

18. Coming to the facts of the present case, the thrust of the arguments before this Court was upon the eviction petition having been filed without the consent of all the co-owners and the legal representatives of Varinder Singh having an objection to the same. Though, it was also argued that there were a number of triable issues and the Rent Controller, therefore, erred in denying the leave to defend the eviction petition, the main thrust, as noticed above, was upon the issue of consent of all the co-owners.

19. I have perused the judgment passed by the Rent Controller which has been impugned in the present revision petition. The eviction petition had been filed primarily on the ground of the tenanted premises being required by Sh. Devinder Singh Marwaha who is a Non Resident Indian, for his bonafide personal requirement as he intended to shift back to India and further intended to start his business of a restaurant/fast food joint from the tenanted premises. In the application preferred under Section 18-A of the Rent Act, it was mainly contended that there were many triable issues and thereafter certain objections were raised to the eviction petition. They were more general in nature than being specific objections. The issue was examined by the Rent Controller at threadbare

and eventually it came to the conclusion that leave to defend was not

required to be given. In the considered opinion of this Court, no fault can be found with the view taken by the Rent Controller keeping in view the legislative intent behind the statutory provisions which provide for an eviction petition to be filed by a Non Resident Indian as also the provisions of law as laid down by the Hon'ble Apex Court in **Baldev Singh Bajwa versus Monish Saini** (supra). I do not, therefore, find any error in the said findings, warranting interference in revisional jurisdiction. Even otherwise, as has been noticed previously, the main thrust of the arguments was on the issue of the consent of the co-owners.

20. Coming to the issue of the consent of co-owners, it would first be appropriate to examine the law on the subject. As was noticed in the opening part of the findings, it is well settled that an eviction petition can be maintained by one landlord/co-owner, in case there are more than one owner. The latest judgment on the said issue is of the Hon'ble Apex Court in **Mangal Builders & Enterprises Limited & Anr. versus Williamson Magor & Company Ltd. & Anr.** (supra). In that case, two out of three co-owners had instituted a suit for eviction of the tenant. The third co-owner, in his written statement, objected to the eviction and explicitly stated that the petition had been filed without his consent. Infact, the said co-owner filed an application under Order VII Rule 11 of the Code of Civil Procedure for rejection of the plaint and while dealing with the said application, the issue of maintainability cropped up. The trial Court held that the issue of maintainability would be decided during the course of the trial. The High Court, however, took a view that the suit would not be maintainable in view of the specific objection having been raised by the third co-owner. The

matter reached the Hon'ble Apex Court wherein, after examining the issue,

the Hon'ble Apex Court held that a suit filed by a co-owner in the absence of any objection of the other co-owners would definitely be maintainable. However, in case a co-owner objected to the suit, the same would not be maintainable. The findings of the Hon'ble Apex Court are required to be referred to and the same are as under:-

“5. The issue of maintainability of a suit in the facts noticed above apparently has not fallen for consideration before this Court. What has been decided and it will not be necessary to refer to the long line of cases on the point is with regard to the maintainability of a suit filed by a co-owner in the absence of any objection of another co-owner(s). Such a suit has been held to be maintainable. What would be the position if a co-owner objects, as in a present case, is the question that calls for an answer in the present petitions.

6. The closest decision on the point is in the case of India Umbrella Manufacturing Co. and Others v. Bhagabandei Agarwalla (Dead) by LRs. Savitri Agarwalla(Smt) And Others, 2004(1) RCR (Civil) 686 : 2004(1) RCR (Rent) 154 : (2004) 3 SCC 178, which, however, does not answer the question fully as the objection of the co-owner in India Umbrella (supra) was in the course of the trial of the suit and in a situation where the suit property had changed hands.

7. The concept of co-ownership of immove-able property need to hardly detain the Court. Every co-owner has ownership of the entire property which in absence of any partition must be understood to extend to every inch of the property.

8. The very concept of co-ownership, in the absence of any partition, would militate against the maintainability of the suit for eviction against a tenant, where the tenant is admittedly in possession of the property which is owned by the co-owner who objects to the eviction.

9. The decision of Patna High Court in Sharfuddin and Others v. Bibi Khatija and Another, 1988(1) RCR (Rent) 549 : AIR 1988 Patna 58 has been cited by Shri C.A. Sundaram, learned senior counsel, to persuade the Court that the view expressed therein may serve as a foundation for laying down the law upholding the maintainability of a suit filed in a situation where a co-owner does not consent and, in fact, objects to the decree of eviction sought by the other co-owner. It is contended that such a view would be a reasonable and logical extension of the law laid down by this Court with regard to maintainability of suit filed by a co-owner, where no objection is raised by another co-owner.

10. Having read and considered the judgment of the full Bench of the Patna High Court in Sharfuddin (supra), we are unable to agree with the views expressed therein. The Patna High Court seems to have taken into account the power of veto which would be vested in a co-owner if a suit for eviction to which he objects is held to be not maintainable. The issue with regard to partition which is an option open to the co-owners who seek eviction was sought to be answered by the High Court by holding the aforesaid remedy to be cumbersome. When the law provides a remedy which the aggrieved party can avail of, the same cannot, in our considered view, be ignored only on the ground that asking the parties to avail of the said remedy would be relegating them to another round of litigation.

11. For the aforesaid reasons, we are inclined to take the view that the decision rendered by the High Court in first appeal is correct. We, therefore, affirm the said decision and dismiss these petitions for special leave to appeal against the order of the High Court.”

21. A similar view was taken by a Co-ordinate Bench of this Court by way of a judgment dated 06.03.2019, passed in CR-11649 of 2018,

titled as Gyan Aggawal versus Brij Bhushan Salwan. In that case also, one of the co-owners had objected to the filing of the eviction petition and, under the circumstances, while relying upon the judgment of the Hon'ble Apex Court in **Mangal Builders & Enterprises Limited & Anr. versus Williamson Magor & Company Ltd. & Anr.'s case** (supra) the Coordinate Bench took the view that the eviction petition would not be maintainable.

22. Now, it is required to be seen as to whether the consent of co-owners was there for filing of the eviction petition or had it been objected to by them at some stage. As has been noticed previously also, the eviction petition was filed by two co-owners namely Harnam Kaur and Devinder Singh Marwaha. It was specifically mentioned in paragraph 1 of the eviction petition that the petitioners were co-owners and landlords of the tenanted premises. Further, it was mentioned in paragraph 3 of the eviction petition that Sh. Balwant Singh Marwaha had expired on 12.08.1986 and as such all his legal representatives including the petitioners therein had succeeded to the estate of Sh. Balwant Singh and had, as such become the co-owners of the tenanted premises. Still further, in paragraph 7 of the eviction petition, it was averred that the whole family including all the co-owners had decided that petitioner No.2 i.e. Devinder Singh Marwaha would shift to India and would start a restaurant/fast food joint from the tenanted premises to which all other co-owners had duly consented. In paragraph 9 of the eviction petition, it was stated that setting up of the business in the tenanted premises was likely to be beneficial for the petitioners therein and the other co-owners had no objection to the same. It is, therefore, clear that in the eviction petition, it was duly pleaded

that the same was being filed with the consent of all co-owners. In the application filed under Section 18-A of the Rent Act, seeking leave to contest the petition, no such objection was taken. It was nowhere stated that the eviction petition had been filed without the consent of the co-owners. Infact, the tenant was no one to raise this objection and this objection could have, at best, been raised by the co-owners. In any case, it was not raised in the application.

23. The legal representatives of Varinder Singh who was one of the sons of Balwant Singh, moved an application under Order 1 Rule 10 read with Section 151 CPC for being impleaded as petitioners. In this application, it was averred that Varinder Singh had expired on 12.01.2012 and that they also wanted to be the petitioners in the eviction petition and they had an apprehension that Devinder Singh Marwaha would grab the entire property. In this application, it was nowhere stated that they had any objection to the filing of the eviction petition. In fact, no objection was given on the said application by Sh. Devinder Singh Marwaha and accordingly the legal representatives of Varinder Singh were impleaded as petitioners in the eviction petition.

24. Then came an application for dismissal of the eviction petition. This application was filed by the legal representatives of Varinder Singh and it was averred that the eviction petition had been filed without their consent. Interestingly, this application was filed in March, 2015 and in August, 2015, the share of these legal representatives was purchased by respondent No.3 i.e. Mukesh Kumar who is none else than the son of Sh. Tehal Singh. The reason behind filing the said application, therefore, becomes abundantly clear. By this time, the parties i.e. the legal

representatives of Varinder Singh and the legal representatives of Tehal Singh seem to have struck a deal with regard to the 15% share of the legal representatives of Varinder Singh leading to the filing of the application for dismissal of the eviction petition. It was a master stroke by the tenants to defeat the eviction petition. The Court would have to lift the veil for a clearer vision of the intentions of the legal representatives of Varinder Singh on one hand and the legal representatives of Tehal Singh on the other. Admittedly, there was no objection by Varinder Singh till he was alive and the objections started pouring in after his death. Infact, even after his death, when the application under Order 1 Rule 10 CPC was moved, there was no objections to the eviction petition and for the sake of repetition, it needs to be noticed that the objections came in only after the deal was stuck. Such nefarious designs can never be permitted to succeed. A Coordinate Bench of this Court was dealing with one such issue in the case of **Smt. Prabha Sehgal and others versus Shri Subhash Sagoonja and others 2018 (2) R.C.R. (Rent) 599.** In this case, it was held that a subsequent transferee who becomes a co-owner cannot be permitted to frustrate a valid decree of eviction passed in favour of a co-owner and against a tenant. It was held by the Coordinate Bench as under:-

“18. Still further, it would not be proper and in the interest of justice that a co-owner is allowed to frustrate order of eviction passed against a tenant merely because the tenant enjoying the long possession has been able to secure the transfer of rights of some of the co-owners who on account of compelling reasons, have succumbed to pressure and sold their share. In the present case, it is apparent that on account of long drawn litigation, various co-owners have sold the property in favour of

tenant, his wife, friend of tenant Rattan Jaiswal and his wife. It is well settled that once a person purchases an undivided share in the joint property, he is entitled to the possession only by way of partition. A subsequent transferee who has become co-owner cannot be allowed to frustrate a valid decree of eviction passed in favour of the co-owner and against the tenant which is for the benefit of all the co-owners.

19. This issue can also be examined from another angle. As per section 111 of the Transfer of Property Act, merger of tenancy or determination of lease is only possible if whole of the property vests at the same time in one person in the same right. Section 111 (d) deals with the aforesaid situation. In the present case, landlady-petitioner continues to be co-owner and tenant continues to be a tenant. A tenant cannot be permitted to create a situation by purchase of some share in the property defeating the rights of the other co-owners.”

25. If the matter is examined in totality, there remains no doubt that the objection was raised by the co-owners i.e. the legal representatives of Varinder Singh only at the instance of the tenants and such objections would not be taken to be bonafide objections and consequently would not be entertainable. There is, therefore, no merit in the said argument raised by learned Senior counsel representing the petitioner and respondent No.3. The petitioner and respondent No.3 have infact, in a way, made a mockery of the system by opposing the eviction petition as a tenant and as a co-owner at the same time. Such conduct needs to be depreciated and on account of this conduct as also for the reasons mentioned in the preceding paragraphs, no indulgence deserves to be granted.

26. In view of the aforementioned facts and circumstances, I do not find any reason to interfere with the well reasoned decision of the Rent Controller.

Accordingly, finding no merit in the present petition, the same is hereby dismissed.

(VIKRAM AGGARWAL)
JUDGE

23.08.2023
mamta

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