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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CIVIL REVISION No.5146 of 2018
DATE OF ORDER: 09.02.2023

Sultan Singh

.....Petitioner

Vs.

Subhash and another

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: Mr.Parminder Singh, Advocate for
the applicant-petitioner

Mr.Govinder Chauhan, Advocate for the
applicant-respondent No.1.

Ms.Perna Malhotra, Advocate for
Mr.Prateek Mahajan, Advocate for respondent No.2.

Nidhi Gupta, J.

Present revision petition has been filed by the Defendant-Petitioner seeking setting aside of order dated 3.7.2018/Annexure P-4, and order dated 02.08.2018/Annexure P-6, whereby on an application filed by the respondent No.1-plaintiff under Order 39 Rules 1 and 2 CPC for interim injunction, direction has been issued to respondent no.2 herein, to remove the electricity meter from the demised premises.

2. Briefly stated the facts are that the respondent No. 1-plaintiff filed a suit for permanent injunction against the petitioner-defendant. The respondent No. 1 and the petitioner are real brothers. Respondent No. 1 claimed ownership

over the suit property on the basis of sale deed dated 03.07.1984. Brief sequence of events is as follows:

03.07.1984 Nar Singh father of petitioner and respondent No.1, purchased the suit property in the name of respondent No.1, minor, by way of sale deed dated 3.7.1984.

24.03.2017 Nar Singh father of petitioner and respondent No.1 expired.

2003 It is the pleaded case of the petitioner that upon the death of Nar Singh, the house in question fell into the share of petitioner, and the electricity connection was taken by the petitioner.

Petitioner states that as the electricity connection was disconnected due to non-payment of bill, the petitioner took temporary connection from the neighbour. But the electricity department imposed a case of theft of energy against the petitioner on the ground that electricity connection through the neighbouring house is not permissible.

Meanwhile, respondent No.1 filed the suit for ejectment against the petitioner wherein arrears of rent were prayed for. The petitioner took the plea that the house in question fell into his share as per family settlement.

07.08.2015 Respondent No.1 also instituted a rent petition for ejectment of the petitioner from the demised premises.

19.12.2017 The petitioner deposited the computing fees as well as the outstanding electricity charges.

23.03.2018 Meanwhile, when the petitioner moved the application for restoration of the electricity supply, respondent No.1 instituted the present suit praying for a decree of permanent injunction restraining the defendants / respondents herein, from installing the electricity connection in the house/ demised premises as described in paras 2 and 3 of the plaint.

19.07.2018/

02.08.2018 Order 39 Rule 1 and 2 application moved by the respondent No.1 allowed and appeal preferred by the petitioner has been dismissed.

10.08.2018 This Court, while issuing Notice of Motion, stayed the operation of the order for removal of the meter.

The suit for ejectment instituted by the respondent No.1 stand dismissed. The electricity is fall under the basic amenities while the possession of the house in question with the petitioner is not in dispute.

3. As noticed above, the prayer in the present suit was to restrain the petitioner-defendant from installing the electricity connection in the house owned by the plaintiff as fully detailed in Para 2 and 3 of the plaint. The present petitioner appeared and filed written statement, *inter alia*, pleading therein that as per the family partition, the house had come in the share of the petitioner and he had been residing in the said house since the year 1999 without paying any kind of rent to the respondent-plaintiff.

4. It was further submitted by the petitioner that the electricity connection account No.ST-28-4266-W was installed in the house somewhere in the year 2003 in the name of the petitioner. The said connection was disconnected due to non-payment of bill and a case of theft of electricity was lodged against the petitioner. Thereafter, the petitioner has paid the entire electricity bill and the compounding fee and applied for fresh electricity connection.

5. Along with the suit, the respondent-plaintiff filed an application under Order 39 Rule 1 and 2 read with Section 151 CPC. It is the said application which has been allowed by way of impugned order dated 03.07.2018. Against order dated 3.7.2018, the petitioner filed Appeal, which has been dismissed vide impugned order dated 2.8.2018. Hence, present revision petition.

6. It is, *inter alia*, submitted by learned counsel for the petitioner-defendant that the possession of the petitioner over the demised premises has been admitted by the respondent-plaintiff in Para 4 of the plaint (Annexure P-1). It is submitted that earlier an electricity connection was subsisting in the name of the petitioner in the house in question. However, the said connection was disconnected due to non-payment of bill, which was subsequently restored after the petitioner had cleared the entire dues. It is submitted that electricity is a basic amenity and the petitioner cannot be deprived of the same at the hands of the respondent. Learned counsel submits that without admitting the landlord-tenant relationship between the parties, reference may be made to Section 10, Haryana Urban Rent Act, 1973, which stipulates that landlord cannot interfere with the amenities.

7. No other argument is made on behalf of the petitioner.

8. Per contra, it is submitted by learned counsel for the respondent-plaintiff that the house in question is in the ownership of the respondent, and the petitioner cannot be permitted to install electricity connection in the house owned by the respondent without any right, title or interest in the said premises. It is submitted that the petitioner is only trying to create evidence to establish his non-existing ownership over the demised premises. Learned counsel refers to Para 15 of the impugned order dated 02.08.2018 (Annexure P6) passed by the lower Appellate Court wherein the lower Appellate Court has recorded the contention of the petitioner that he is the owner of the premises and the electricity meter has already been installed at his premises. It is submitted that therefore, it is clear that the petitioner is trying to create evidence that he is owner of the

demised premises. It is submitted that the petitioner cannot be permitted to do so and therefore, the revision petition deserves to be dismissed.

9. I have heard learned counsel for the parties.

10. Perusal of the record of the case shows that the impugned orders have been passed primarily on the ground that the respondent-plaintiff has *prima facie* established that he is owner of the demised premises by way of registered sale deed No.712/1 dated 3.7.1984, as also by placing reliance upon the mutation No.3570 sanctioned in favour of the respondent-plaintiff. It is on this ground that the learned Courts below have granted interim injunction in favour of the respondent-plaintiff, and further restrained the petitioner-defendant from installing electricity connection in the house/demised premises.

11. In my view, the impugned orders deserve to be set aside as undisputedly, the petitioner is in occupation of the demised premises. In this regard, the learned Courts below have ignored the averment of the respondent-plaintiff himself in Para 4 of the plaint wherein he has stated: "That plaintiff is owner/landlord of the house constructed in the aforesaid land measuring 0K-5M situated at village Shamgarh, Tehsil Nilokheri, District Karnal, fully detailed in para No.2 and 3 of the petition. The aforesaid house has been given on rent to the respondent on a monthly rent of Rs.2000/- per month by the plaintiff".

A bare perusal of the above averments shows that the possession of the petitioner over the demised premises has been admitted by the respondent-plaintiff himself.

12. Moreover, during the course of argument, it has been brought to the notice of this Court that the ejectment petition filed by the respondent-plaintiff for

eviction of the petitioner from the demised premises has been dismissed by the learned Additional Civil Judge (Junior Division), Karnal, vide order dated 14.01.2020. A copy of the said order is taken on record as Mark-A. Learned counsel for the respondent-plaintiff has admitted the passing of the above said order, however, submits that the rent petition of the respondent has been dismissed on a purely technical ground. A perusal of the above said order shows that the said rent petition has been dismissed on the ground that the respondent No. 1 herein was unable to establish the relationship of landlord – tenant between the petitioner herein and himself.

13. Further, even in the said order, the factum of possession of the petitioner over the demised premises has been categorically recorded as follows:

“Rather, cross-examination of PW Subhash shows that respondent is not in possession of the demise premises as tenant. At page no. 3 of the cross-examination, he stated that after death of his father, his brother Sultan, respondent started residing in the house in question. At the same page, he stated that in the year 2002, Sultan came in the house in question. At page no. 5 of the cross-examination, he stated that in family settlement, ancestral house was divided. According to him, Sultan owned one vacant plot and Sultan is residing in the house in question. During cross-examination, at page no. 6, he also stated that his wife used to take rent from respondent.”

14. In my view, once it is established on record that the petitioner is in possession of the demised premises, the service of electricity connection/electricity supply cannot be denied to the petitioner, the same being a basic amenity. In this view of the matter, I find that the impugned orders passed by the learned Courts below granting interim injunction to the respondent directing to remove the electricity meter are legally unsustainable and deserve to be set aside.

15. It has also come on record that the electricity connection was released to the petitioner in pursuance to order dated 23.3.2018, which was passed by XEN, Suburban, Division No. 1, Karnal, in pursuance to an order passed by the District Grievance Redressal Forum, Karnal on an application moved by the respondent-plaintiff, wherein defendant No.2/respondent No.2 was directed to release the connection to the defendant No.1/petitioner.

16. Accordingly, in view of the facts as discussed above, the present revision petition is allowed and the impugned orders dated 3.7.2018, and 2.8.2018, are set aside.

09.02.2023

kanika

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No