

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

(242)

**CR-5849-2018 (O&M)
Date of Decision: 01.08.2023**

Shanti Devi and another

.....Petitioners

Versus

Gian Sarup

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. B. M. Vinayak, Advocate, for the petitioners.

Mr. V. K. Sandhir, Advocate, for the respondent.

HARKESH MANUJA, J.(ORAL)

1. By way of present revision petition, challenge has been made to the judgment dated 24.01.2018 passed by the appellate Court whereby an order dated 21.08.2015 passed by the learned Rent Controller allowing the ejectment filed at the instance of petitioners-landlord, has been reversed.

2. In the present case, an ejectment petition came to be filed at the instance of petitioners against respondent qua the tenanted premises carrying property No.2304/12 situated at Gali Mochian Wali, Nai Gali, Katra Sher Singh, Amritsar, on the grounds of property being required for personal necessity: the same having been rendered unfit and unsafe for human habitation and also on account of non-payment of arrears of rent.

3. Upon notice, respondent appeared and contested the ejectment petition, though, the relationship of landlord and tenant was not disputed in the initial written statement. The Rent Controller vide its judgment dated 21.08.2015 allowed the eviction petition in favour of petitioners-landlord while holding their need to be genuine and *bona fide* and also that the tenanted premises had become unfit and unsafe for human habitation.

4. Aggrieved thereof, respondent-tenant filed first appeal besides having prayed for amendment of his written statement so as to plead and deny the relationship of landlord and tenant by disputing the identity of the tenanted premises. Prayer for amendment of written statement filed at the instance of respondent-tenant was allowed.

5. The first appellate Court vide its judgment dated 24.01.2018 allowed the appeal filed at the instance of respondent-tenant while doubting the identity of the tenanted premises as compared to the premises purchased and owned by the petitioners vide registered sale deed dated 26.08.1991.

6. Impugning the aforesaid judgment, learned counsel for the petitioners submits that the first appellate Court went wrong while non-suiting the petitioners on the ground of identification of the tenanted premises. Relying upon the sale deed dated 26.08.1991 which was proved on record as Ex.A-49, learned counsel for the petitioners submits that the same includes and comprises the tenanted premises and in fact is a part of bigger property carrying Municipal Number 1515/XII-10. Learned counsel also submits that so as to establish the identity of the tenanted property, an application seeking permission to lead additional evidence has also been filed along with present revision petition and the document sought to be produced by way of additional evidence goes to root of the matter and removes all doubts in this regard.

7. On the other hand, learned counsel representing respondent vehemently submits that prayer made in the application seeking permission to lead additional evidence should not be allowed. He submits that once the relationship of landlord and tenant as regards the property in question by the respondent by filing amended written statement, it was primary duty of the petitioners to establish the identity of the tenanted premises; having failed to

landlord cannot be permitted to lead additional evidence. He further submits that a detailed and comprehensive finding has been recorded by the first appellate Court as regards the identity of the tenanted property, based on the document, available on record while holding that the petitioners never purchased the premises in question. He also submits that the petitioners never ever raised the plea that they were residing on the first floor of the tenanted premises and this plea was being raised for the first time in the present revision petition. In addition, he also points out that from a perusal of the sale deed itself it can be seen that only the premises which was under their own tenancy was purchased by the petitioners.

8. I have heard learned counsel for the parties and gone through the paper book. I find substance in the submissions made on behalf of petitioners/landlords.

9. In the present case, in the original written statement was filed at the instance of respondent-tenant, neither any plea/objection was raised about the identity of the demised premises; nor even the relationship of landlord and tenant was questioned. This plea was raised for the first time in the first appeal by way of seeking amendment of written statement which was allowed. Even in the amended written statement, the respondent-tenant admitted that the demised premises formed part of property No.1515/XII-10, however, merely disputed the ownership of petitioners/landlord qua the same. A perusal of sale deed dated 26.08.1991 vide which, the petitioners purchased the demised premises and was proved on record as Ex.A-49 *prima facie* shows that the predecessor-in-interest of petitioners-landlords sold 23 square yards of land consisting of two storied building over it and the same formed part of property No.1515/XII-10. On a careful comparison of the aforesaid document with the findings recorded by the first appellate Court, it is evident that said

document has totally been misread. Learned first Appellate Court went on to record that the petitioners merely purchased the property in their possession being its tenant meaning thereby that the first floor portion only was purchased and not the ground floor; whereas contents of the sale deed show to the contrary as it finds mentioned in the said document that the property sold to the petitioners was two storied.

10. Besides it, though the identity of tenanted premises which in fact forms part of being a portion of building comprising No. 1515/XII-10 was disputed by the respondent-tenant at the stage of first appeal, the petitioners were required to establish their identity beyond reasonable doubt that time only, yet, considering fact that the substantial rights of the parties are involved and an application seeking permission to lead additional evidence has been filed along with the present revision petition towards the proof of identity of the tenanted premises, the same needs to be allowed as the documents now sought to be produced are going to help the Court to decide the present controversy in a complete and effective manner while ascertaining the issue of identity of the property more conclusively. The petitioners would suffer serious prejudice in case their application is not allowed and they are not permitted to establish the identity of the demised premises in a decisive and definite manner, the same being the ground floor of the property purchased by the petitioners.

11. Resultantly, the present revision petition is allowed and the impugned judgment dated 24.01.2018 passed by the first appellate Court is hereby set aside and the matter is remanded so as to permit the petitioners to lead additional evidence as regards the identity of the tenanted premises and decide the matter afresh on merits as well. The respondent-tenant shall also be granted opportunity to rebut the evidence led by the petitioners.

12. Considering the fact that the eviction petition was filed in the year 2010, the appellate Authority is requested to decide the same within a period of one year. The parties are directed to appear before the Appellate Authority on 28.08.2023.

13. Pending applications, if any, stand disposed of.

(HARKESH MANUJA)
JUDGE

01.08.2023
anil

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No