

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(234)

CR-843-2017 (O&M)

Date of Decision : 29.05.2023

Jarnail Singh

...Petitioner

Versus

Umesh Parsad @ Kalu

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Jagjot Singh Lalli, Advocate for the petitioner.

Harsimran Singh Sethi J. (Oral)

CM-2595-CII-2017

Present application has been filed for placing on record the documents as Annexures P-1 to P-4.

Application is allowed and documents as Annexures P-1 to P-4 are taken on record.

CR-843-2017

1. The present civil revision petition has been filed challenging the judgment of the Appellate Authority dated 25.10.2016 by which an order passed by the Rent Controller allowing the rent petition filed by the petitioner-plaintiff, has been set-aside.

2. Learned counsel for the petitioner-landlord argues that in the present case, the tenancy as well as the ownership of shop is not in

dispute and keeping in view the ground raised qua the personal necessity, the same had already been allowed by the Rent Controller by appreciating all the facts and eviction was ordered. Learned counsel for the petitioner-landlord submits that the Appellate Authority by misreading the evidence came to the conclusion that there was suppressing of facts with regard to selling of one of the shop by the petitioner-landlord so as to hold that the grant of benefit of eviction was not to be allowed keeping in view the said suppression of a fact, which was material and was required to be disclosed in the eviction petition.

3. Learned counsel further submits that the ground taken by the Appellate Authority to allow the appeal is that during the pendency of the Rent Petition, the petitioner-landlord had sold a shop, which shows that there was no personal necessity of him for the eviction of the shop in question and the said fact was withheld from the Court, whereas, actually a piece of land was sold by the petitioner-landlord and not any shop as has been held by the Appellate Authority.

4. Learned counsel for the petitioner relies upon the testimony of Joga Singh, Record Clerk from the O/o Sub Registrar, who had brought the original sale deed in the Court, wherein, it has been stated by him that a land was sold by the petitioner and not the shop, which fact has escaped the notice of the Appellate Authority while recording the finding so as to set-aside the judgment of the Rent Controller. Learned counsel for the petitioner submits that the order passed by the Appellate Authority is perverse.

5. Nobody is appearing on behalf of the respondent since long. Today also, no one has appeared on behalf of the respondent, hence there is no option with the Court but to decide the claim raised without the assistance of the respondent-tenant.

6. I have heard learned counsel for the petitioner and have gone through the record with his able assistance.

7. It may be noticed that the Appellate Authority reversed the judgment of the Rent Controller only on the ground that a shop sold by the petitioner vide sale deed dated 24.06.2013. The Appellate Authority came to the conclusion that as there was already an accommodation available with the petitioner, which he had sold i.e. 24.06.2013, which fact was also withheld by the Court, shows that the petitioner already had sufficient property in his possession for his personal needs. From the testimony of Joga Singh, Record Clerk, O/o Sub Registrar, it is clear that the sale deed was pertaining to the plot of a shop and not a constructed shop. The said plot cannot be treated to be an alternative adequate property, which the petitioner was required to disclose before the Court.

8. Even otherwise, once there was a constructed shop, which could have been easily used by the petitioner for his personal need, the said personal need cannot be fulfilled by a plot, where the shop could have been constructed. Hence, the evidence on record has been misread by the Appellate Authority while passing the order dated 25.10.2016. The perversity in the judgment impugned has been proved and hence, the same cannot be sustained in the eyes of law.

9. Further, learned counsel for the petitioner submits that even as of now, the said shop is not being used by the respondent-tenant at all. The same is lying closed with a lock and the only intention of the respondent-tenant is to extract money before handing the possession of the shop. Though, no observation can be made on the said plea as the same is not proved but the non-appearance of the respondent-tenant in the present petition shows that there is no need of the property in question.

10. Keeping in view the above, the order dated 25.10.2016 passed by the Appellate Authority is set-aside and the present petition is allowed and the order passed by the Rent Controller dated 11.12.2014 is restored.

May 29, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No