

CR-1896-2022 (O&M)

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-1896-2022 (O&M)
Reserved on : 12.04.2023
Date of Decision : 17.04.2023

Gauri Shankar alias Gopi (deceased) through LRsPetitioners

VERSUS

Gautam Parkash (deceased) through LRs and OthersRespondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ravish Bansal, Advocate for the petitioners.

-. -

ALKA SARIN, J.

1. The present revision petition has been preferred by the tenants against the orders passed by both the Authorities below returning concurrent findings of fact and ordering their ejectment.

2. Brief facts relevant to the present *lis* are that the landlord-respondent No.1 filed an ejectment petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the 'Punjab Rent Act') for eviction of the present petitioner and the proforma respondents from the shop bearing Municipal property/shop No.IX/1048 averring that the shop in dispute is in the ownership of landlord-respondent No.1 since 30.03.1994 and it fell to the share of the landlord-respondent No.1 in a family partition, which was upheld by the Court of Sh.Varinder Aggrawal, the then Civil Judge (Junior Division), Moga vide judgment and

decree dated 17.05.1997 passed in case No.831 of 12/1995. It was further averred that originally the shop in dispute was owned by Charanjit Rai and Sons i.e. family concern or the HUF concern of the family of the landlord-respondent No.1 and the shop in dispute alongwith adjoining shops bearing Municipal property/shops No.IX/1047 and IX/1046 are also owned by the landlord-respondent No.1. The shop in dispute was let out to Ram Parsad son of Dami Ram Aggrawal i.e. real uncle's father's brother of the proforma respondents herein orally before 31.03.1974 at the rate of Rs.25/- per month and a memorandum of the said oral agreement of lease was executed by Ram Parsad son of Dami Ram Aggrawal on 01.04.1974 incorporating therein all the terms and conditions of the oral agreement. It was further averred that the tenant Ram Parsad was doing the business of selling utensils in the shop in dispute till the end of 1974 and thereafter he parted with exclusive possession of the shop in dispute in favour of Gauri Shankar (predecessor of the present petitioners) without the consent of the landlord-respondent No.1 and thus the tenants were liable for ejectment from the shop in dispute on the ground of subletting. The ground of unfit and unsafe, arrears of rent and personal necessity were also raised. The learned Rent Controller vide order dated 17.05.2018 allowed the ejectment petition. Aggrieved by the said order, an appeal was preferred by the present petitioners and others. Before the Appellate Authority it had been contended that Gauri Shankar (predecessor of the present petitioners) was a sub-tenant and that that the petitioners were in possession of the shop in dispute but since there was no relationship of landlord and tenant between the present petitioners and the landlord-respondent No.1, no ejectment order

could have been passed against them. In the impugned order passed by the Appellate Authority it has been noticed that the grounds of ejectment *per se* were not challenged and that the appeal was preferred only on the ground that there was no relationship of landlord and tenant between the parties.

3. Learned counsel for the petitioners has, at the outset, candidly admitted that during the pendency of the present revision petition, possession of the shop in dispute has been taken by the landlord-respondent No.1. He, however, states that he wishes to argue the case on merits. Learned counsel for the petitioners would contend that since Gauri Shanker (predecessor of the present petitioners) was impleaded as a sub-tenant, hence no order of ejectment could have been passed against the petitioners since there was no relationship of landlord and tenant between the parties.

4. Heard.

5. In the present case, a perusal of the record reveals that Gauri Shanker (predecessor of the present petitioners) had filed a written statement taking the stand that he was not a sub-tenant but a tenant. The Rent Controller on Issue No.1 held that *“Respondents No.1 to 3 have specifically denied the landlord and tenant between the parties, however, respondent No.4 has admitted that he is direct tenant in the shop in dispute and respondents No.1 to 3 never sublet the shop in dispute to him, which proves that defendant No.4 is the tenant in shop in dispute, which is the ownership of legal heirs of petitioners, accordingly, the relationship of landlord and tenant is admitted between the legal heirs of petitioner and respondent No.4. Moreover, Sham Sundar who is one of the legal heirs of respondent No.4 examined as RW2 has himself admitted in his cross-*

CR-1896-2022 (O&M)

-4-

examination that his father Gauri Shankar paid rent till filing of the present suit to petitioner Gautam Parkash, which proves the relationship of landlord and tenant between petitioner and respondent No.4 and further between the legal heirs of petitioner and legal heirs of respondent No.4. Thus, in view of the detailed finding given above, this Court is of the considered opinion that legal heirs of petitioners have succeeded to discharge the burden of this issue". The findings on Issue No.1 were affirmed by the Appellate Authority. Once the relationship of landlord and tenant was admitted by Gauri Shanker (predecessor of the present petitioners), the argument that no ejectment order could have been passed against them would not stand. Further, Sham Sunder son of Gauri Shanker while appearing as RW-2 admitted in his cross-examination that his father had paid rent till the filing of the ejectment petition to the landlord-respondent No.1. That being so, the relationship of landlord and tenant having been established and admitted, the argument raised by the counsel for the petitioners deserves to be rejected. No other argument has been canvassed.

6. In view of the above, the present petition, which is wholly devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

17.04.2023
tripti

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO