

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

133

CR-2166-2020 (O&M)
Date of decision: 31.10.2023

SURINDER KUMAR

..Petitioner

Versus

HARI PARKASH SHARMA AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vaibhav Sehgal, Advocate
for the petitioner.

Mr. D.V. Sharma, Sr. Advocate
with Ms. Sunder Kumari, Advocate
for respondent No.1.

ANIL KSHETARPAL, J(Oral)

1. The petitioner herein is a tenant who has been ordered to be evicted by the Appellate Authority. The tenanted premises is a shop located in Ahmedgarh, District Malerkotla. The petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949, was filed by the respondent Sh. Hari Parkash Sharma. He along with his mother and brother purchased the plot in question through the sale deeds. He further pleaded that in a family settlement between the brothers and sisters, he has become the sole owner of the property. The petitioner before this Court is the son of late Sh. Ved Parkash (the original tenant). He contested the petition by claiming that the petition is not maintainable because a compromise decree exists between four brothers splitting the property into two separate parts. Hence, it was contended that the petition was not maintainable.

2. The ejectment of the petition was sought on the grounds of non-payment of rent as well as the bonafide necessity of Sh. Hari Parkash

Sharma. The learned Rent Controller dismissed the petition, however, the Appellate Authority has ordered ejectment of the tenant.

3. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with requisitioned record.

4. The learned counsel representing the petitioner has contended as under:-

i. The pleadings of the parties are at variance with the evidence produced.

ii. The property is different from the property mentioned in the sale deed made in favour of Smt. Leelawati.

iii. Sh. Krishan Kumar another brother of Sh. Hari Parkash Sharma filed another petition, wherein, he claimed that the petition filed by Sh. Hari Parkash Sharma, as sole owner is without any basis.

iv. The ejectment petition is based on the concealment of facts and therefore, the ejectment petition is liable to be dismissed.

5. On the other hand, the learned Senior counsel representing the respondent No.1 contends that on 06.01.1981, a civil suit for possession in which the predecessor in interest of the petitioner was a party, came to be decided vide judgment (Ex.A-13). In the aforesaid suit, it was held by the Court that Smt. Leelawati, the mother of Sh. Hari Parkash Sharma, was the owner of the property. It is submitted that the aforesaid judgment has been affirmed in appeal by the First Appellate Court on 05.04.1982 (Ex.A-14). He

Further contends that Smt. Leelawati left behind four sons and five sisters.

All the five sisters have already transferred their share in favour of the respondent Sh. Hari Parkash Sharma. He submits that even if the family settlement has not been proved, still the respondent being one of the co-owners is entitled to maintain the petition.

6. This Court has considered the submissions of the learned counsel representing the parties.

7. Undoubtedly, while filing the petition under Section 13, the respondent has claimed that he along with his brother and mother purchased the property, however, there is a judgment passed by a competent Court on 06.01.1981, declaring that the shop in question is exclusively owned by Smt. Leelawati. In that suit, predecessor of the petitioner (tenant) was a party. Moreover, while deciding the ejectment petition, the Court is required to see, “whether the landlord has made out a ground for ordering eviction of the tenant or not?” The learned Rent Controller in the case of ejectment is not required to decide the ownership of the parties. While contesting the petition, the tenant has been given only a limited right to contest the maintainability of the petition on the ground that there is no relationship of landlord and tenant between the parties. In this case, that is not the dispute involved.

8. It is not in dispute that Smt. Leelawati was declared owner of the property vide judgment (Ex.A-13). Hence, a minor variation in the pleadings of the parties and the evidence would not adversely impact the decision of the case.

9. The second argument of the learned counsel representing the petitioner has no substance because the judgment (Ex.A-13) is with respect to the shop in question. In the aforesaid suit, the predecessor of the petitioner

was party. Smt. Leelawati was declared the owner of the property. The respondent (landlord) is one of the co-owners. Hence, there is no dispute with regard to the identification of the property, which is under tenancy.

10. The next argument of the learned counsel representing the petitioner also has no substance because at one point in time, Sh. Krishan Kumar Sharma filed a petition in the year 2014 complaining the non-payment of rent. Once, the rent was tendered, the petition was dismissed as infructuous as the rent was tendered. There is no decision on the merits of the case. Sh. Krishan Kumar Sharma has never objected to the maintainability of this petition by filing an application or appearing in the witness box. He has not even stated that he does not want the ejectment of the petitioner.

11. The last argument of the learned counsel representing the petitioner is based on the concealment of facts. In this case, the petitioner has proved that there was a compromise decree between the four brothers passed by the Court on 24.09.1976. However, the same loses significance particularly when the judgment (Ex.A-13) was passed on 06.01.1981. At the cost of repetition, in the year 1981, the predecessor of the petitioner was made a party.

12. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

13. Dismissed accordingly.

14. All the pending miscellaneous applications, if any, are also disposed of.

October 31st, 2023

(ANIL KSHETARPAL)
JUDGE

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No