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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-2973-2022 (O&M)

Date of Decision: 01.05.2023

Firoza Begum and another

....Petitioners

Versus

Mohd. Saeed and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. M.S. Yadav, Advocate
for the petitioners.

None for the respondents.

ARUN MONGA, J. (ORAL)

Revisionists seek setting aside of an order dated 19.05.2022 (Annexure P-3) passed by Ld. Rent Controller, Malerkotla, whereby their application under Order 1 Rule 10 CPC for adding/substituting them as necessary party in petition under Section 13 of East Punjab Urban Rent Restriction Act, 1949 (for short 'the Act, 1949'), was dismissed.

2. Succinct facts first, as pleaded in the petition herein.

2.1. Respondent No.1-Mohd. Saeed has filed a rent petition under Section 13 of the Act, 1949 seeking ejectment of respondent No.2-Ramesh Singla from the shop in question situated at Mohalla Nishat Colony, Malerkotla. Respondent No.1 pleads that an oral partition and family settlement took place between his late father Shabbir Ahmad and Mohd. Shahid in the month of February, 2019. As per settlement shop in dispute

along with remaining part of the building came into the share of Shabbir Ahmad. A written agreement was also executed on 15.03.2019, whereby it was settled Shabbir Ahmad will be entitled to receive the rent of the shop in dispute. Unfortunately, Shabbir Ahmad died on 15.04.2019. Respondent No. 2 Ramesh Singla is thus stated to be a tenant of shop in dispute on a monthly rent of Rs. 1,680/- per month on the basis of oral partition and family settlement.

2.2. Petitioners herein, claim that they are real owners and also in possession of the shop in question as the tenancy was surrendered on 01.10.2019 and vacant possession was also handed over to them. They plead that respondent No.1 has filed the rent petition by concealing these crucial facts from Ld. Rent Controller. Therefore, petitioners filed an application under Order 1 Rule 10 CPC read with Section 151 CPC for adding/substituting the petitioners in the abovesaid rent petition. Notwithstanding their claim, Ld. Rent Controller vide its impugned order dated 19.05.2022 (Annexure P-3) dismissed the application filed by present petitioners.

3. Learned counsel argues that Ld. Rent Controller failed to consider material aspect of the case that, admittedly, respondent Nos. 1 & 2 have no concern with the suit property. Furthermore, the suit property is the part of one building measuring 151¼ sq. yds. He would further argue that Ld. Rent Controller has failed to consider that, as has been pleaded in para-3 of the application for impleadment, that petitioner No.1 Firoza Begum and one Farzana, wife of Mohd. Salim, had originally purchased entire property measuring 151¼ sq. yds. vide registered sale deed dated 09.11.2000

(Annexure P-4), which also includes the shop in question. Thereafter, on 20.06.2013, the abovesaid Farzana orally gifted away one-half share in favour of petitioner No.1 as per Mohammedan Law regarding which memorandum of oral gift (Annexure P-5) was also executed on 24.07.2013. Resultantly, petitioner No.1 became absolute exclusive owner in possession of the entire property measuring 151¼ sq. yds. He would further states that petitioner No.1 later sold half share of the property measuring 151¼ sq. yds. to the petitioner no.2 vide registered sale deed dated 03.06.2014 (Annexure P-6). Petitioners are thus co-owners in possession of the entire property measuring 151¼ sq. yards including shop in question.

4. None appears on behalf of respondents, despite service.

5. Heard.

6. Perusal of impugned order itself reflects that there is a dispute *inter se* the petitioners and respondent no.1 with regard to title of the premises in question. Respondent No.1 claims that he is the landlord while the petitioners herein claim that they are current owners in possession of the demised premises.

7. The *lis qua* ownership of the demised premises is stated to be pending in collateral proceedings vide civil suit titled *Shabir Ahmed through LR's vs. Mohd. Shahid*. Another civil Suit bearing CS No.406/2019, titled *Shabana Begum vs. Mohd. Saeed*, preferred by petitioners seeking declaration to the effect that ownership *qua* some other suit property between the parties is also pending, wherein the petitioners have been allowed to be arrayed as party under Order 1 Rule 10 CPC.

8. Be that as it may, ownership dispute of demised shop is not the scope and domain of the pending rent proceedings and shall have to be adjudicated by the competent court which is seized of the civil suits. Ordinarily, trite law it is that, a person instituting legal proceedings, being *Dominus Litis*, is the master of his *lis*, and thus cannot be compelled to implead a party against whom he is not claiming any relief. Having said that, facts of the instant case are rather peculiar wherein not only petitioners claim to be owners, but also claim to be in possession of the same very shop, after its tenancy was allegedly terminated by the tenant himself (respondent no.2) and he voluntarily handed over the vacant possession thereof.

9. In the overall premise, in order to balance the equities and to meet the ends of justice, petitioners herein shall be allowed to join the proceedings by way of impleadment. It is made clear that impleadment is being ordered only to avoid any *prejudice* to petitioners *qua* their rights of ownership, which as already observed are *sub judice*.

10. Disposed of in above terms.

11. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

May 01, 2023
ashish

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No