

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

CR-4143-2023(O&M)

Date of Decision: July 25, 2023

RAVINDER

..... Petitioner

Versus

SUMITRA

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Ajay Kumar Kansal, Advocate for the petitioner.

HARKESH MANUJA, J. (ORAL)

By way of present revision petition filed by the tenant, challenge has been laid to the orders dated 26.09.2022 and 04.07.2023 passed by the Rent Controller, Bhiwani as well as the Appellate Authority, Bhiwani whereby an eviction petition filed at the instance of respondent-landlady stands allowed.

2. Briefly stating, the respondent-landlady filed an eviction petition against the petitioner-tenant regarding shop bearing No.K-133 situated in Bajar Bajaja, Halu Bajar, Bhiwani. The eviction was sought on the grounds of non-payment of rent as well as bona fide necessity with the averments that the respondent-landlady wanted to start her own business of boutique so as to increase her income. The eviction petition was opposed at the instance of petitioner-tenant by filing written statement; wherein it was submitted that one another shop bearing No.K-152 which was owned by the respondent-landlady was already available with her. Besides it, the factum of alleged family settlement arrived at between respondent-landlady and her sister qua the two shops was also disputed.

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3. The Rent Controller vide its judgment dated 26.09.2022 ordered eviction against petitioner-tenant, holding the bona fide need of the respondent-landlady to be genuine.

4. Aggrieved thereof, the petitioner-tenant filed appeal, however, the same also came to be dismissed vide judgment dated 04.07.2023 passed by the Appellate Authority, Bhiwani.

5. Impugning the aforementioned judgments passed by the Courts below, learned counsel for the petitioner vehemently submits that the alleged family settlement between the two sisters was a farce document executed on 07.08.2017 merely for the purpose of filing of eviction petition immediately thereafter on 10.08.2017. He further submits that the said document being an unregistered one could not have been relied upon by the Courts below for the purpose of adjudicating the entitlement of respondent-landlady. In this regard, he relies upon decision made by Hon'ble Apex Court in case of **"Vineeta Sharma Vs. Rakesh Sharma and Ors. 2020Law Suit (SC) 505"**.

Relevant Para No.129(v) thereof is reproduced hereunder:-

“(v) In view of the rigor of provisions of Explanation to [Section 6\(5\)](#) of the Act of 1956, a plea of oral partition cannot be accepted as the statutory recognised mode of partition effected by a deed of partition duly registered under the provisions of the [Registration Act](#), 1908 or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly.”

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6. Learned counsel for the petitioner also submits that the respondent-landlady failed to prove her bona fide need as no other evidence except for her own deposition was led on her behalf. Learned counsel further submits that in case the memorandum dated 07.08.2017 was ignored, the ejectment petition lacked the necessary ingredients as required under Section 13(3)(i) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 and thus the ejectment petition was liable to be dismissed on this count as well.

7. I have heard learned counsel for the petitioner and gone through the paper-book as well as law cited at the Bar, however, I am unable to find substance in the submissions made on behalf of the petitioner.

8. In the present case, a specific plea has been raised in the eviction petition that the shop in question bearing number K-133 was jointly owned by the two sisters i.e respondent-landlady and Smt. Kaushalya, being the daughters of original owner, namely, Giani Ram and in pursuance to a family settlement, it fell to the share of the respondent-landlady. A perusal of the document dated 07.08.2017 (Ex. P2) shows that the same itself was not a family settlement but was merely a memorandum vide which the terms of a previous family settlement were reduced into writing and thus, was not required to be registered as this document itself never created any right, title or interest in the property for the first time in favour of respondent-landlady. The respondent-landlady, in fact, already happened to be a co-sharer in the suit property being equally owned along with her sister,

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namely, Kaushalya. The shop in question exclusively fell to her share by virtue of a previous family settlement and the document dated 07.08.2017 was merely a recognition to its terms for remembrance between the two sisters and thus never required any registration. My aforesaid view can also be derived from the law laid down by the Hon'ble Supreme Court in case of **"Bakhtawar Singh Vs. Gurdev Singh reported as 1996(9) SCC Page 370**. Relevant portion from para 4 is reproduced hereunder:-

"The memorandum Ex. A-1 recording past partition, put on record before the Rent Controller was not pronounced upon and, was brushed aside by the appellate authority holding that it could not be seen in the absence of registration even though the decision of this Court in Roshan Singh v. Zile Singh 1988 AIR(SC) 881 : 1988 (2) SCR 1106] stood cited, in which it was held that a subsequent memorandum recording past oral partition as a family settlement was not required to be registered. Memorandum, Ex. A-1 when read, substantially discloses that the shop in dispute stood fallen to the share of the appellant. Besides two brothers of the appellant appeared as AW-2 and AW-5 and supported it. It records the factum of the past but for certainty the brothers had chosen to straighten things w. e. f. 23-2- 1982 and the said notice Ex. A-4 to the respondent was to the effect that 'the appellant was entitled to receive rent w. e. f. 1-3-1982. The Rent Controller did not fully grasp the legal situation in the matter and wrongly denied eviction of the respondent on that score."

The judgment in case of **"Vineeta Sharma's case (supra)** cited at Bar thus has no application to the facts and circumstances of present case.

9. Moreover, even if the document dated 07.08.2017 was ignored, the respondent-landlady being one of the joint owners in the demised premises was having right to seek eviction of the petitioner-tenant particularly under the circumstances when there was no

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opposition from the side of other co-sharer i.e. her real sister Kaushalya whose husband Mr. Ajay Mittal himself appeared for respondent-landlady as PW-3 to support her claim.

10. Furthermore, the right to challenge any family settlement between the landowners, at the instance of petitioner-tenant is extremely limited which, in my view, in the present facts and circumstances is not available as the husband of the sister of respondent-landlady himself appeared to support her claim on all counts and thus, the previous family settlement recognized through memorandum dated 07.08.2017 cannot be termed to be carrying any suspicion.

11. Lastly, the plea raised by the learned counsel for petitioner-tenant as regards non-pleading of necessary ingredients in the eviction petition by the respondent-landlady, is not made out from the contents of the eviction petition. A perusal of para 8 of eviction petition shows that respondent-landlady has disclosed the factum of both the shops and for convenience, the same is reproduced hereunder:-

“8. That Gianai Ram and two daughters, i.e. one petitioner and another Kiran alias Kaushlya. Sumitra petitioner is unmarried whereas Kiran Mittal has been married, there has been a family settlement between the sisters vide which the shop in dispute fell to the petitioner's share whereas there is another shop which is 20 shops ahead of the shop in dispute fell in to the share of Kiran Mittal.”

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A perusal of the above shows that there is no concealment of any material fact on the part of respondent-landlady in the eviction petition and thus non-pleading of necessary ingredients was not made out.

12. Equally important, the bona fide need of the respondent-landlady has been duly established on record from her own deposition as well as from the deposition of her brother-in-law Ajay Mittal who appeared as PW-3 in support. In the present facts, respondent-landlady happens to be an unmarried lady who intends to set up her own business so as to derive income and her age cannot be termed to be an impediment in her endeavour.

13. In view of the discussion made hereinabove, finding no merits in the present revision petition, the same is dismissed as no interference is warranted in the limited discretion vested under Section 15(6) of Haryana Urban (Control of Rent and Eviction) Act, 1973, the findings of the Courts below being based on evidence.

26.07.2023
tejwinder

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>

