

CR-4108-2022(O&M)

2023:PHHC:127311

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

CR-4108-2022(O&M)
Date of Decision: 29.09.2023

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MANISH GUPTA

.....Petitioner

Versus

MANGAL DASS DECEASED THROUGH HIS LR AND ANR

.....Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH.

Present: Mr. Gagandeep Singh Sirphiki, Advocate for the petitioner.

Mr. Harminder Singh, Advocate for respondent No.1(i)

GURBIR SINGH, J (ORAL)

This petition is filed under Article 227 of the Constitution of India for setting aside the order dated 01.08.2022 (Annexure P-8) passed by learned Rent Controller, Batala in RP-17-2017 vide which the application under Order 22 Rule 3 read with Section 151 CPC for bringing on record the legal heir of Mangal Dass has been allowed.

The brief facts as culled out from the paper book are that Mangal Dass (hereinafter called 'landlord') filed an application for ejectment of the petitioner-Manish Gupta and respondent No.2-Manoj Kumar (hereinafter called as 'tenants') on the ground that the shop was bonafidely required by him for his own use and occupation and for the use and occupation of his family members.

It is pleaded that landlord is having wife and one married son, namely, Kumar

The respondents contested the petition *inter alia* on the ground that Mangal Dass is not the owner of the disputed property and infact Improvement Trust, Batala is owner of the property in dispute which has taken the possession of the suit property along with the property as per the award passed under the Land Acquisition Act. Kumar Gaurav is not the son of the landlord rather is the son of Gulshan Kumar and daughter of Mangal Dass.

In the rejoinder, the applicant stated that he had no male child of his own, so after the birth of Kumar Gaurav, he adopted him from his daughter by performing all the ceremonies. During the pendency of the case, applicant- landlord has died and Kumar Gaurav moved an application for bringing him on record on the basis of Will executed by Mangal Dass. Vide impugned order dated 01.08.2022, said application has been allowed

Learned counsel for the petitioner-tenant has argued that Mangal Dass stepped in the witness box as AW-1 and stated that no adoption deed was executed in respect of the adoption of Kumar Gaurav. Since the applicant Mangal Dass (since deceased) was hard of hearing and he could not face the cross examination so there was no question of execution of Will by him. It is further submitted that learned Rent Controller was required to frame issues and to take evidence, then only legal representatives on the basis of Will could be brought on record. In view of Order 22 Rule 5 read with Section 151 CPC, it is the duty of the learned Rent Controller to first determine whether the person is legal representative of the deceased then only he can be brought on record. Reliance has been placed on the judgment of this Court rendered in ***Devraj Vs. Shish Ram, 2014(2) R.C.R.(Rent) 18.***

The argument of learned counsel for the landlord is that the tenant cannot challenge the legality of the Will. Even no natural heir has come forward

for bringing him on record. The applicant is also grandson of the deceased. Earlier adoption deed was never executed for adoption of child. This petition is without any merit.

I have heard the submissions of the learned counsel for the parties.

The purpose of bringing on record legal representative of deceased is that he should not be unrepresented. In the instant case, grandson of deceased has filed application to bring him on record on the basis of Will executed by the deceased Mangal Dass. No natural heir has come forward that he be brought on record through Mangal Dass. There is no challenge by anybody to the status of applicant as legatee of Mangal Dass. The Court take note of the following precedents. In case of ***Dashrath Rao Kate Vs. Brij Mohan Srivastava, 2009(4) R.C.R.(Civil) 912***, there was death of landlord during the pendency of the suit for eviction and legal representative of the landlord was brought on record on the basis of Will. It has been held by the Hon'ble Apex Court that the tenant cannot challenge the legality of Will. In case of ***Sunil Kumar Jain Vs. Abdul Karim, 1992(1) R.C.R.(Rent) 136***, it has been held by this Court that there is no need to go into detailed inquiry regarding genuineness of the Will which is the domain of the Civil Court. Application for bringing on record should be decided summarily leaving the parties to get their rights determined in the Civil Court. There is hardly any scope for adjudicating right of the parties under Order 22 Rule 5 CPC. In case of ***Rajender Vs. Gopal Dass, 1992(2) R.C.R.(Rent) 498***, landlady was acquiring property on the basis of Will and the application was filed for ejectment of tenant, it is held by this Court that tenant cannot challenge the validity of the Will and the Will can be challenged only by the heirs of testator or by any other person claiming share in the property.

The case of ***Devraj Vs. Shish Ram (supra)*** cited by counsel for the

petitioner is on different footing. Paragraphs 11 and 12 of the said judgment are as under:-

“11. During the course of arguments, it has been urged on behalf of the respondent that the petitioner at an earlier point of time had produced his mother Smt. Mohan Devi as Smt. Jamna Bai to get the property in dispute from the Custodian Department taking benefit of the fact that name of his father as also name of husband of Smt. Jamna Bai was Remal Dass though Smt. Jamna Bai and Smt. Mohan Devi are two different, distinct and separate individuals. It is claimed that the petitioner showing his mother Smt. Mohan Devi as Smt. Jamna Bai had got prepared forged documents and had received retirement pension of Remal Dass from Govt. treasury whereas Smt. Jamna Bai had died long ago. It is claimed that the petitioner had faced trial and was held guilty and was then convicted in FIR No.340 dated 16.8.1992, inter-alia, under Sections 420, 467, 468, 471 and 120-B IPC of PS City, Narnaul on 16.10.2005 and was ordered to undergo imprisonment for three years. Per contra, it is claimed by the Counsel for the petitioner that he was then acquitted in appeal.

12. The matter of heirship of Smt. Jamna Bai is not a straight and simple affair. It is rather shrouded in suspicion on more than one counts. Application of the petitioner incorporating his claim of legal representation of Smt. Jamna Bai has been ordered to be decided on certain issues of facts on which the petitioner has been called upon to produce evidence. The petitioner had made a vain attempt to get the said order reviewed by a separate petition preferred in this behalf, which was also dismissed with costs. In view of the circumstances explained earlier, there is no reason with the petitioner to shy away from satisfying the Court about genuineness of his claim with regard to his proposed impleadment as legal representative of Smt. Jamna Bai.”

In this case, the identity of the lady was in dispute and the person claiming as her legal heir was even prosecuted on the ground that he was showing his mother Mohan Devi as Smt. Jamna Bai and got prepared forged documents, the said authority is not applicable to the facts of the present case.

In the case in hand, natural heirs have even not come forward. The Will is not required to be decided in this case. Since there is no challenge to the Will executed by Mangal Dass so no inquiry is required to be conducted to bring his legal representative on record on the basis of Will.

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So in view of the above discussion, I do not find any illegality and infirmity in the order passed by learned Rent Controller. The revision petition is without any merit and it is dismissed accordingly.

Pending application, if any, shall also stand disposed of.

(GURBIR SINGH)
JUDGE

29.09.2023

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Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No