IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on: **22.09.2023**

Date of Pronouncement: **30.11.2023**

1. CR No.6289 of 2019

Mukesh Sudhir ....Petitioner

vs.

Vinish Sood ....Respondent

2. CR No.4959 of 2017

Tilak Sundri Jain & others ....Petitioners

vs.

Vinish Sood ....Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr. V.P. Arora, Advocate,
for the petitioners in CR-4959-2017.

Mr. Divanshu Jain, Advocate,
for the petitioner(s) in CR-6289-2019.

Mr. Rishabh Gupta, Advocate,
for the respondent(s).

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<u>HARKESH MANUJA, J</u>

1. This order of mine shall dispose of abovementioned two revision petitions as common issue and facts are involved. For convenience, facts are being taken from Civil Revision No.6289 of 2019.

2. By way of CR-6289-2019, challenge has been made to an order dated 10.09.2019 passed by the Appellate Authority, Kapurthala, affirming the order dated 08.02.2019, passed by the learned Rent Controller, Kapurthala, whereby, eviction petition filed at

the instance of the respondent-landlord, pertaining to a shop situated in Old Dana Mandi, Phagwara bearing Municipal NO. BXL-111/7 has been allowed.

3. Briefly stating, facts of the aforementioned case are that respondent filed an eviction petition against the petitioner qua a shop situated in Old Dana Mandi Phagwara, by making averments that he is co-owner/landlord of the building including the shop in dispute, to the extent of 2/5th share by virtue of sale deed dated 23.10.2009 executed by the previous co-owners, namely, Smt. Krishana Sood and Chander Kanta Ram Pal. The shop in dispute formed part of said building and there was a specific condition in the sale deed that respondent shall be entitled to the 2/5th share of the rent of this shop which was let out to the petitioner-tenant originally by Savitri Devi being the previous owner, on a monthly rent of Rs.667/-, besides House Tax. Eviction was sought on the grounds of personal and bonafide necessity, arrears of rent and the shop having become unfit and unsafe for human habitation.

4. Subsequent events in this case which were of important consideration are that Rachna Sudhir and Tilak Sundari Jain vide sale deed dated 12.10.2010 purchased share to the extent of 148.4 square feet out of 296.8 square feet i.e. 1/5th area of double storey two shops comprising part of area of 8.14 marlas (1484 Square Feet) on the ground floor for value and consideration of Rs.3,20,000/-, and thus became co-owners to the extent of 1/5th share. Similarly, Rajni Jain and Nidhi Jain vide sale deed dated 11.10.2013 purchased

share to the extent of 3.26 marlas (593.60 Square Feet) i.e. 2/5th area of double storey two shops comprising part of area of 8.14 marlas (1484 Square Feet) for value and consideration of Rs.55,84,500/-and thus, became co-owners to the extent of 2/5th share. These subsequent purchasers were in blood/close relationship with the tenant-petitioner and for obvious reasons, they opposed the eviction of the tenant. These subsequent purchasers even filed applications under Order 1 Rule 10 of CPC for impleading them as parties in two separate eviction petitions, but the same were dismissed by the Rent Controller.

5. From the tenant side, a primary objection was raised regarding the maintainability of the eviction petition that the property still being joint, consent of the other co-sharers was not taken before filing the same. Learned Rent Controller relying upon **"M/s India Umbrella Manufacturing Co. v. Bhagabandei Agarwalla (Dead) by LRs. Savitri Agarwalla (Smt)"**, reported as 2004(1) RCR (Rent) 154 : (2004) 3 SCC 178 held the petition to be maintainable and vide order dated 08.02.2019 allowed the same only on the ground of personal and bonafide necessity. Appeal filed by the petitioner-tenant against the aforesaid order was dismissed by the Appellate Authority, Kapurthala, vide order dated 10.09.2019 while affirming eviction the order dated 08.02.2019, passed by the Rent Controller, Kapurthala.

6. In the present revision petition as well, the entire thrust by the learned counsel for the petitioner has been on the maintainability

of the eviction petition and no submissions have been made regarding merits of personal and bonafide necessity of the respondent. Learned counsel for the petitioner submits that vide sale deeds dated 12.10.2010 and 11.10.2013, 1/5th and 2/5th share of the joint property was purchased by other persons who categorically expressed, in application filed under Order 1 Rule 10 of CPC, before the rent controller that they did not consent to the eviction petition filed by the respondent and since the property was still joint, therefore, consent of all the co-sharers/co-owners was mandatory. He further submits that respondent-landlord neither obtained permission from the other co-sharers/co-owners, nor from their predecessor-in-interest, hence the ejectment application filed by the respondent being without proper authority was thus not maintainable. Though, he provides a series of judgments in support of his contention, however, he primarily relies upon **"Mangal Builders and Enterprises Limited v. Williamson Magor and Company Ltd."**, in case bearing no. SLP(C) No(s).9616-9617 of 2015 decided on 06.04.2017, relevant para of which is reproduced below:-

> *"The very concept of co-ownership, in the absence of any partition, would militate against the maintainability of the suit for eviction against a tenant, where the tenant is admittedly in possession of the property which is owned by the co-owner who objects to the eviction."*

7. On the other hand, learned counsel for the respondent-landlord submits that alleged co- owners purchased the shares after filing of the present eviction petition and therefore, the Rent Controller

as well as Appellate Authority rightly upheld the maintainability of present petition and no interference is warranted. In support of his submission, he places reliance upon judgment of a coordinate bench of this Court in the case of **“Tehal Singh vs Harnam Kaur and others”**, bearing CR-4987-2015, decided on 23.08.2023.

8. I have heard learned counsel for the parties and gone through the paper book of the case as well as the law cited at bar. I do not find much substance in the arguments made by learned counsel for the petitioner. Appellate Authority as well as the Rent Controller have already discussed in detail the contention raised by learned counsel for the petitioner regarding maintainability of the eviction petition filed by the petitioner being one of the co-owner of the demised shop and rightly dismissed the same.

9. Present eviction petition was instituted by the respondent on 01.04.2010, after purchasing 2/5th share of the demised building vide sale deed dated 23.10.2009, in which there was a specific clause that respondent would be entitled for the 2/5th share of rent qua the demised shop as well. Alleged co-owners regarding whose consent, petitioner has raised objection, purchased their rights vide sale deeds dated 12.10.2010 and 11.10.2013 i.e. subsequent to the filing of the present eviction petition. Accordingly, the Appellate Authority as well as the Rent Controller rightly relied upon **India Umbrella’s case** (supra) which is applicable to the facts of the present case. Relevant paras of the same are reproduced hereunder:-

“6. Having heard the learned counsel for the parties we are satisfied that the appeals are liable to be dismissed. It is well settled that one of the co-owners can file a suit for eviction of a tenant in the property generally owned by the co-owners. (See: Sri Ram Pasricha Vs. Jaganath and others, 976 RCR (Rent) 832; Dhannalal v. Kalawatibai and others, 2002(6) SCC 16 : 2002(2) RCR (Rent) 126 (SC). This principle is based on the doctrine of agency. One co-owner filing a suit for eviction against the tenant does so on his own behalf in his own right and as an agent of the other co-owners. The consent of other co-owners is assumed as taken unless it is shown that the other co-owners were not agreeable to eject the tenant and the suit was filed in spite of their disagreement. In the present case, the suit was filed by both the co-owners. One of the co-owners cannot withdraw his consent midway the suit so as to prejudice the other co-owner. ***The suit once filed, the rights of the parties stand crystallised on the date of the suit and the entitlement of the co-owners to seek ejectment must be adjudged by reference to the date of institution of the suit;*** *the only exception being when by virtue of a subsequent event the entitlement of the body of co-owners to eject the tenant comes to an end by act of parties or by operation of law.*

7. Buchi Devi had willingly joined with Bhagabandei in filing the suit. During the continuity of litigation she parted with her share in the property. One out of the two tenants purchased her share. It seems that the *tenancy is in the name of a partnership firm and some of the partners have purchased the share of Bhagabandei. It is not clear if all the partners or only a few out of all the partners are the buyers. The fact remains that they have purchased only a share in the property and not the entire property. The applicability of doctrine of merger within the meaning of Clause (d) of Section 111 of the Transfer of Property Act, 1882 is not attracted. In order to bring the tenancy to an end the merger should be complete, i.e. the interest of the landlord in its entirety must come to vest and merge into the interest of tenant in its entirety.* ***When part of the interest of the landlord or the interest of one out of many co-landlords-cum-co-owners comes to vest in the tenant, there is no merger and the tenancy is not extinguished****. In our opinion, the first appellate Court was not justified in placing a rider on the right of the decree-holders to execute the decree unless the property was partitioned between the co-owners. However, we need not dwell much upon this aspect as that part of the decree has achieved a finality as the landlords have not pursued their challenge to the decree of the first appellate Court by filing special leave petitions in this Court.*

8. The decree, in so far as the other tenant and sub-tenants i.e. the appellants in C.A. No. 5358 of 1996 are concerned, has to be sustained. ***The partners of the other tenant firm i.e. M/s. India Umbrella Manufacturing Co. (appellant in C.A. No. 5357 of 1996) have purchased the property pendente lite***

> ***and therefore they cannot be allowed to take a stand contrary to the one taken by their predecessor-in-interest and to the prejudice of the other plaintiff whose rights they have not purchased****. Their filing an application that they were not interested in securing eviction of the other tenant is in the facts and circumstances of the case immaterial and irrelevant.”*(emphasis supplied)

10. Judgment in **Mangal Builders’s case** (supra), relied upon by the learned counsel for the petitioner is not applicable to the facts of present case as in that case co-owner had raised objection to the eviction petition from the beginning of the case itself. Rather this distinction has been noted in **Mangal Builders’s case (supra)** itself which is reproduced as under:-

> *"The closest decision on the point is in the case of India Umbrella Manufacturing Co. And Others Vs. Bhagabandei Agarwalla (Dead) by LRs. Savitri Agarwalla (Smt) and Others, which, however, does not answer the question fully as the objection of the co-owner in India Umbrella (supra) was in the course of the trial of the suit and in a situation where the suit property had changed hands."*

11. From a perusal of both the judgments, it is apparent that in a scenario where co-owners have acquired their right post-institution of the eviction petition and subsequently object to the same, ratio of **India Umbrella’s case** (supra) would be applicable and not of **Mangal Builders’s case (supra)**, wherein co-owner raised objection to the eviction petition from its institution itself. It is

also appropriate to note here that ratio of **India Umbrella's case** (supra) was subsequently followed in **"Pramod Kumar Jaiswal and Others v. Bibi Husn Bano & Ors",** reported as 2005(5) SCC 492 and **"FGP Ltd. v. Saleh Hooseini Doctor & Another"**, reported as 2009(10) SCC 223 as well.

12. A coordinate Bench of this Court in **"Smt. Prabha Sehgal and others vs Shri Subhash Sahoonja and others"**, reported as 2018(2) R.C.R.(Rent) 599, in similar circumstances, held that once a person purchases an undivided share in the joint property, he is entitled to the possession only by way of partition. Relevant para of this judgment is reproduced hereunder :-

> *"18. Still further, it would not be proper and in the interest of justice that a co-owner is allowed to frustrate order of eviction passed against a tenant merely because the tenant enjoying the long possession has been able to secure the transfer of rights of some of the co-owners who on account of compelling reasons, have succumbed to pressure and sold their share. In the present case, it is apparent that on account of long drawn litigation, various co-owners have sold the property in favour of tenant, his wife, friend of tenant Rattan Jaiswal and his wife. It is well settled that once a person purchases an undivided share in the joint property, he is entitled to the possession only by way of partition. A subsequent transferee who has become co-owner cannot be allowed to frustrate a valid decree of eviction passed in favour of the co-owner and against the tenant which is for the benefit of all the co-owners."*

13. Relying upon **India Umbrella's case** (supra) and **Prabha Sehgal's case** (supra), another co-ordinate Bench of this Court in **Tehal Singh's case** (supra) held that objections raised on behalf of such subsequent purchaser/co-owner would not be taken to be bonafide objections and consequently would not be entertainable. Relevant para of this judgment is reproduced hereunder:-

> *"25. If the matter is examined in totality, there remains no doubt that the objection was raised by the co-owners i.e. the legal representatives of Varinder Singh only at the instance of the tenants and such objections would not be taken to be bonafide objections and consequently would not be entertainable. There is, therefore, no merit in the said argument raised by learned Senior counsel representing the petitioner and respondent No.3. The petitioner and respondent No.3 have infact, in a way, made a mockery of the system by opposing the eviction petition as a tenant and as a co-owner at the same time. Such conduct needs to be depreciated and on account of this conduct as also for the reasons mentioned in the preceding paragraphs, no indulgence deserves to be granted."*

14. Furthermore, I am unable to find substance in the argument raised by learned counsel for the petitioner that consent of the predecessor-in- interest of the present co-owners was also not taken. It is settled law that one of the co-owners can file suit for eviction of tenant and it is not necessary for the co-owner to show before initiating the eviction proceeding that he had taken consent of the other co-owners. Reliance in this regard can be placed on

judgment of the Hon'ble Apex Court in **"Mohinder Prasad Jain v. Manohar Lal Jain"**, reported as (SC) 2006(2) SCC 724, relevant para of which is reproduced below:-

> *"10. A suit filed by a co-owner, thus, is maintainable in law. It is not necessary for the co-owner to show before initiating the eviction proceeding before the Rent Controller that he had taken option or consent of the other co-owners. However, in the event, a co-owner objects thereto, the same may be a relevant fact. In the instant case, nothing has been brought on record to show that the co-owners of the respondent had objected to eviction proceedings initiated by the respondent herein. The submission of the learned counsel for the appellant to the effect that before initiating the proceedings, the appellant was required to show that he had experience in running the business in Ayurvedic medicine, has to be stated to be rejected. There is no law which provides for such a pre-condition. It may be so where a licence is required for running a business, a statute may prescribe certain qualifications or pre-conditions without fulfilment whereof the landlord may not be able to start a business, but for running a wholesale business in Ayurvedic medicine, no qualification is prescribed. Experience in the business is not a pre-condition under any statute. Even no experience therefor may be necessary. If the respondent has proved his bona fide requirement to evict the appellant herein for his own purpose, this Court may not, unless an appropriate case is made out, disturb the finding of fact arrived at by the*

Appellate Authority and affirmed by the High Court."

15. Moreover, eviction sought by one of the co-sharers is not an act which causes prejudice to the other co-sharers, rather it enhances towards the rights of the joint owners as well as to the value of the property in the given facts when it is fetching just nominal rent. By purchasing a part of the property during pendency of the eviction petition, purchaser having become co-sharer/co-owner, cannot defeat the vested rights of the other existing co-owners by raising objections to the maintainability of the eviction petition, particularly, when no such objection was ever raised at the instance of his vendor. Such co-owner having purchased part of demised premises during pendency of eviction petition is estopped by the act and conduct of his/her predecessor and cannot travel beyond it just by siding with the tenant, so as to defeat the rights of other co-owners in the joint property, which would be impermissible in law, while regulating the *inter se* rights of co-owners in a joint property.

16. By applying the above stated principles to the facts and circumstances of the present case, it can be seen that alleged co-owners purchased their share after filing of the present eviction petition and they did not bother to examine their predecessor-in-interest before the Rent Controller to show that they had not consented to the eviction petition, therefore, Appellate Authority as well as the Rent Controller rightly upheld the maintainability of the same.

17. So far as the another CR-4959-2017 is considered, as the final order in the eviction petition has already been passed in the absence of any stay order operating in favour of petitioners, not only it has become infructuous, but in view of **India Umbrella's case** (supra), filing of any such objections by co-owners who happen to be subsequent purchasers, is also immaterial and irrelevant and therefore, on this count as well, this revision petition is liable to be dismissed.

18. Accordingly, in view of the discussion held above, no grounds are made out to interfere with the judgment passed by the Appellate Authority and Rent Controller and accordingly, both the Revision Petitions are hereby dismissed and petitioners-tenants are directed to vacate the demised shop.

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

(HARKESH MANUJA)
JUDGE

30.11.2023
sanjay

Whether speaking/reasoned :	*Yes*
Whether reportable	*Yes*