

CR-1823-2018 (O&M)

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

**CR-1823-2018 (O&M)
Date of Decision: 12.05.2023**

Manpreet K.I. Singh

..... Petitioner

Versus

Amit Singla and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Aman Bahri, Advocate,
for the petitioner.

Mr. Vikas Jain, Advocate,
Mr. Kunal Mulwani, Advocate, and
Mr. Vikas Thakur, Advocate
for respondent No.3.

RAJBIR SEHRAWAT, J. (ORAL)

This is a petition filed under Article 227 of the Constitution of India challenging the order dated 12.02.2018 passed by the Civil Judge (Junior Division), Chandigarh, (hereinafter referred to as 'the Executing Court'), whereby in an execution petition filed by the petitioner, an application filed by respondent No.3-Manmohan Singh Jakhar, the legal representative of Gurpreet Jakhar, has been allowed; and the possession of the rented premises has been ordered to be handed over by the evicted tenant to the respondent No.3-Manmohan Singh Jakhar.

The brief facts of the present petition are that the House No.1392, Sector 33-C, Chandigarh, was owned by one Satinder Pal Kaur. She had executed a Will dated 14.04.2004 in favour of the present petitioner

and respondent No.3-Gurpreet Jakhar, whereby the entire ground floor of above-said house was bequeathed in favour of respondent No.3-Gurpreet Jakhar and the first floor was bequeathed in favour of the present petitioner. Some dispute arose between the parties regarding the said Will. The matter had reached to this Court vide FAO No.1858 of 2010. By way of acceptance of the Will and on the statements made by the parties to that effect, this Court had upheld the Will in favour of the present petitioner and respondent No.3-Gurpreet Jakhar; vide order dated 17.10.2012. The consequent mutation in the record of the Estate Office, Chandigarh has also been entered.

However, in the meantime, the above-said house was rented out to respondents No.1 and 2 by two different lease deeds, firstly by the petitioner and respondent No.3-Gurpreet Jakhar; and subsequently, renewed by the present petitioner only. However, since the petitioner asserted that she was in need of more residential accommodation, therefore, the petitioner and respondent No.3-Gurpreet Jakhar; jointly filed an eviction petition against the respondents No.1 and 2. In that eviction petition, it was asserted that the house was required for residence for family members of the petitioner. Accordingly, in the prayer clause of the eviction petition, it was mentioned that the eviction order against respondents No.1 and 2 be passed in favour of the petitioners, namely, Manpreet K.I.Singh, as well as, in favour of respondent No.3-Gurpreet Jakhar, however, the possession be handed-over to the petitioner. The said eviction petition allowed. However, the order of disposal of eviction petition was not passed on merits of the case, rather, it

was passed on the basis of compromise and the statements of the parties to that effect; recorded before the Rent Controller.

After the eviction order was passed by the Rent Controller, respondent No.3-Gurpreet Jakhar had expired. Therefore, the husband of Gurpreet Jakhar, who is representing now as respondent No.3 in the present petition, filed execution petition on 21.07.2017; claiming the possession of ground floor of the house in question; being the legal heir of Gurpreet Jakhar, in whose favour the title qua the ground floor had already been mutated in the records of the Estate Office, Chandigarh. In that execution petition, since respondent No.3 was representing the landlord, therefore, notice was issued only to the tenants; and not to the present petitioner, who is the co-landlord. During the proceedings of the said execution petition, the tenants sought some extension of time for handing over the possession to respondent No.3-Manmohan Singh Jakhar. Accordingly, the Executing Court passed an order that respondent No.3 be handed over the possession by 15.12.2017. Therefore, respondent No.3 had even furnished his bank details etc. for deposit of the rent by the tenants for the period of extension. Accordingly, the tenants started depositing the rent in the account of respondent No.3.

However, since the notice was not issued to the present petitioner in the above-said execution petition filed by respondent No.3, therefore, in the meantime, the petitioner had also filed a separate execution petition on 31.07.2017 seeking possession of the house in question. In that execution petition, on coming to know of the execution proceedings,

respondent No.3-Manmohan Singh Jakhar also filed an application for being impleaded as a party. The same was allowed by the Executing Court vide order dated 08.12.2017. Since respondent No.3 had been impleaded as a party in the execution petition filed by the petitioner, therefore, she also filed an application in the execution petition filed by respondent No.3; in which vide order dated 10.08.2017 the time was already extended by the Executing Court for vacation of the premises by the tenants upto 15.12.2017. In that application, both the parties made a statement that the fate of the earlier execution petition filed by respondent No.3 would be determined by the order passed by the Executing Court in the subsequent execution petition filed by the present petitioner. It was so ordered by the Executing Court vide order dated 26.10.2017. Therefore, the entire matter came to be clubbed in the execution petition filed by the present petitioner.

At this stage, the respondent No.3-Manmohan Singh Jakhar filed a fresh application dated 11.12.2017 in the execution petition filed by the present petitioner, praying therein that possession of the ground floor be handed over to him alone. The said application was allowed by the Executing Court vide impugned order dated 12.02.2018. Accordingly, the possession of the ground floor has already been handed over by the tenants to respondent No.3. Challenging the said order passed by the Executing Court; the present petition has been filed by the petitioner.

Arguing the case, learned counsel for the petitioner has submitted that since the petitioner was the sole landlord qua the tenants, therefore, the petitioner alone should have been handed over the possession

of house in question. The question of title is totally immaterial in the eviction petition under the East Punjab Urban Rent Restriction Act, 1949. Moreover, in the eviction petition, even the ground pleaded was the personal requirement of present petitioner alone. Therefore, the eviction petition shall be deemed to have been allowed in favour of present petitioner alone; and as per the prayer made in the eviction petition, the possession should have been handed over only to the present petitioner. Learned counsel has further submitted that even up to the date of passing of the final order by the Rent Controller, respondent No.3-Gurpreet Jakhar herself was alive. There had been no dispute raised by her regarding the possession to be handed over to the petitioner exclusively. Even while the eviction petition was disposed of, respondent No.3-Gurpreet Jakhar had also signed a joint statement regarding handing over the possession as per the personal requirement. Since respondent No.3-Gurpreet Jakhar herself had made a statement to that effect, therefore, her heir had no authority to take a divergent stand; and to take possession to the exclusion of the petitioner. The successor-in-interest of the deceased is bound by the stand taken by the deceased predecessor-in-interest. Since the rent petition stood disposed of during life time of respondent No.3-Gurpreet Jakhar, therefore, there is absolutely no question of the husband of respondent No.3, taking a different stand as legal representative of respondent No.3-Gurpreet Jakhar. Learned counsel has further submitted that the Executing Court was required to execute the decree as it is. The Executing Court was not authorized to go beyond the decree and read it in a different manner so as to deny the petitioner her right

to take possession of the property in question. Learned counsel has relied upon the judgements rendered by the Hon'ble Supreme Court in **Bhavan Vaja and others Vs. Solanki Haunji Khodaji Mansang and another, 1972 AIR (SC) 1371 and India Umbrella Manufacturing Co. and others Vs. Bhagabandei Agarwalla (Dead) by LRs Savitri Agarwala (Smt.) and others, (2004) 3 Supreme Court Cases 178.** Learned counsel for the petitioner has also submitted that the Executing Court could not have segregated the issue of possession from the eviction petition because the subject matter of the eviction petition and the compromise statement recorded before the Rent Controller were the same. Therefore, by necessary implication, it would mean that the eviction order had been passed for possession in favour of the present petitioner only.

On the other hand, learned counsel for respondent No.3 has submitted that it is not even in dispute that his wife Gurpreet Jakhar was beneficiary under the Will, which stands upheld up to the High Court. Therefore, respondent No.3-Gurpreet Jakhar had become absolute owner to the extent of 50% share of the house comprised on the ground floor; as per the terms of the Will. It is also not even in dispute that, in the first instance, the lease was executed with tenant; by the petitioner and respondent No.3-Gurpreet Jakhar; jointly. Learned counsel for the respondent No.3 has also submitted that although the renewal of the original lease deed was only through the present petitioner, however, even after renewal of the lease, the rent was being paid jointly to the present petitioner and to respondent No.3-Gurpreet Jakhar. Therefore, the assertion of the petitioner that she was the

exclusive landlord qua the tenants is not even factually correct. Even the eviction petition was filed by both of them jointly; praying for an eviction order in favour of both of them. Therefore, even if the prayer clause of eviction petition contained a stipulation that the possession be handed over to the present petitioner keeping in view her requirement at that time, that would not bind-down respondent No.3-Gurpreet Jakhar to concede the right of the present petitioner to take exclusive possession of the house in question. Moreover, the order passed by the Rent Controller nowhere stipulates that the possession be handed over to the present petitioner. The rent petition had been disposed of only on the basis of settlement arrived at between the rent petitioners on the one hand and the respondents in the rent petition on the other hand. Although, a joint statement had been recorded by the Rent Controller before disposing of the petition, however, even the joint statement recorded before the Rent Controller does not show any agreement on part of respondent No.3-Gurpreet Jakhar to hand over the possession to the present petitioner exclusively. Rather, the settlement with the respondents-tenants was that the possession shall be restored to the rent petitioners, i.e. both the eviction petitioners. Learned counsel has further submitted that mere part of prayer in the prayer clause of the rent petition does not bind the present respondent No.3, who is the husband of the original respondent No.3-Gurpreet Jakhar to any such stipulation. After the death of Gurpreet Jakhar, he being the sole survivor inheriting the estate of respondent No.3-Gurpreet Jakhar has independent right. It is for him to decide whether to concede the exclusive possession in favour of the present

petitioner or to seek the possession of the property in terms of the Will through which the property has devolved upon the parties.

Having heard learned counsel for the parties and having perused the case file, this Court does not find any substance in the arguments raised by the learned counsel for the present petitioner. It is not even in dispute that the petitioner and respondent No.3 had acquired the house in question through a Will; and as per that Will, respondent No.3-Gurpreet Jakhar was entitled to the entire ground floor of the house and the present petitioner was entitled to the first floor of the said house. Still further, it is not even in dispute that originally, the tenancy was created by the present petitioner and respondent No.3-Gurpreet Jakhar jointly. Although, the extension of the tenancy was through present petitioner alone, however, it is also not, again, disputed that even after renewal of the tenancy, the rent was being received by the present petitioner and the respondent No.3 jointly. Therefore, it is well established on record that the present petitioner and the respondent No.3-Gurpreet Jakhar were joint landlords qua the tenants-respondents No.1 and 2. Hence; both of them had right to file eviction petition against respondents No.1 and 2-tenants on the ground spelled out in the East Punjab Urban Rent Restriction Act, 1949. Accordingly, the joint eviction petition was even filed by the present petitioner and respondent No.3. In the said petition, the eviction was sought in the favor of both, the present petitioner, as well as, respondent No.3-Gurpreet Jakhar. It is in that petition that the eviction order has been passed by the Rent Controller, though through a settlement with the tenants. Therefore, for all legal and practical purposes,

the eviction order is to be taken to be in favour of the present petitioner and the respondent No.3; both. Since the petition was filed by the landlords jointly, therefore, each of them had a right to seek possession of the property in execution of the eviction order. The respondent No.3-Manmohan Singh Jakhar claimed the possession of the ground floor on the basis of the shares spelled out in the Will itself; and the Executing Court has permitted that possession in his favour on the basis of a better and clear title qua the said portion of the house. This Court does not find any illegality or impropriety in the said order passed by the Executing Court. Although, the learned counsel for the petitioner has relied upon the judgements rendered by the Supreme Court in the cases of **Bhavan Vaja** (supra) and **Indian Umbrella Manufacturing Co.** (supra), however, the said cases are totally distinguishable. Those judgements only relate to general prepositions of law relating to the Executing Court not going behind the decree. However, in the present case, that issue is not involved at all. Rather, the Executing Court has resorted to only executing the decree as passed by the Rent Controller, though in a more sensible way recognizing the tile of both the parties; as per the undisputed position regarding Will; which is already recognised by this Court vide order dated 17.10.2012.

Although the learned counsel for the petitioner has submitted that in the rent petition, the necessity of the present petitioner alone was pleaded and therefore, the eviction order shall be deemed to have been passed in favour of present petitioner alone. If it is not so interpreted, then the tenant would have a right to re-claim the possession, if the same is not

given to a person on personal necessity of whom the eviction was sought. However, there is no legal warrant for such a proposition as well. There are two reasons for discarding this argument of the learned counsel for the petitioner. Firstly, the issue of personal requirement would be relevant only till the eviction order attains finality. Thereafter, the issue of personal requirement loses significance, so far as the claim of joint petitioners in rent petition is concerned. Secondly, even if the tenant could have prayed for re-claiming the possession on the ground of respondent No.3 not having personal necessity for the premises, that would have been a matter between the tenants and respondent No.3-Manmohan Singh Jakhar. However, as has been observed above, the tenants had already accepted and had agreed to vacate the premises in favour of both the petitioners. Moreover, no such exercise has ever been undertaken by the tenants. The tenants have not even resisted the execution proceedings on the ground of respondent No.3 not having any personal requirement.

The other issue raised by the learned counsel for the present petitioner is that since the prayer in the rent petition mentioned that the possession be handed over to the present petitioner and the joint statement made by the parties before the Rent Controller, was only reflection of the rent petition, therefore, the eviction order should be read as ordering giving possession of the premises to the present petitioner only, however, even reading of the joint statement does not support the argument of the learned counsel for the present petitioner. The statement, on the basis of which the rent petition was decided by the Rent Controller, nowhere mentions that it

was agreed between the parties that the possession be handed over to the present petitioner. Agreement was only to vacate the premises in favour of the petitioners. Not only that, even the order of eviction does not contain any such stipulation qua the possession be handed over to the present petitioner exclusively or even any suggestion to that effect; as such.

Qua the argument of the learned counsel for the present petitioner that during the execution proceedings, the Executing Court could not have gone to decide the title, it deserves to be noticed that it is not the Executing Court which has decided the title. Rather, title had never been in dispute between the parties qua the rent petition. Undisputedly, both of the title holders had filed joint eviction petition after having created tenancy jointly. The Executing Court has only recognized the right to get possession in favour of the person who is the title holder of the portion which has been handed over to him. There is nothing wrong in such an approach adopted by the Executing Court. Failure to do the same would have resulted in totally anomalous situation. If the present petitioner was handed over the possession in execution even qua the portion which legitimately is under the title of respondent No.3, then respondent No.3 would have been pushed to another litigation to seek possession of the said property. Therefore, if respondent No.3 has prevented such a situation from arising in the case, he cannot be taken to have faulted legally; in any respect.

In view of the above, finding no merit in the present petition, the same is dismissed.

Since, the present petition has been dismissed, therefore, all the pending applications have become infructuous and having been disposed of; as such.

(RAJBIR SEHRAWAT)
JUDGE

12.05.2023
adhikari

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No