



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Reserved on : 29.07.2024
Pronounced on : 29.08.2024

1. CR-4088-2018 (O&M)

Hans Raj Petitioner

versus

Prem Chand Bansal (Since Deceased) and another Respondents

2. CR-4094-2018 (O&M)

Mahender Pal Petitioner

versus

Prem Chand Bansal (Since Deceased) and another Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Sumeet Mahajan, Senior Advocate with
Mr. Saksham Mahajan, Advocate
Mr. Shrey Sachdeva, Advocate
for the petitioner in CR-4088-2018.

Mr. Prateek Gupta, Advocate
for the petitioner in CR-4094-2018.

Mr. Amit Jain, Sr. Advocate with
Mr. Aryaman Thakur, Advocate
for respondent No.1 in both cases.

PANKAJ JAIN, J. (Oral)

1. These two revisions are directed against order dated 04.05.2018 passed by Appellate Authority under The Haryana Urban (Control of Rent and Eviction) Act, 1973 whereby eviction has been ordered from shop as detailed out in the headnote of the eviction petition (hereinafter referred to as the demises premises).



2. Landlord filed eviction petition under Section 13 of the 1973 Act claiming that the demised premises was let out by him and his brother Jagan Nath to respondent No.1 vide rent note dated 01.12.1997 at a monthly rent of Rs.7,000/-. As per terms and conditions of the rent note, respondent No.1 was under obligation to enhance monthly rent by 20% on expiry of every 03 years. At enhanced rent, the monthly rent payable at the time of filing of the eviction petition was Rs.12016. Tenant was in arrears of rent since 01.04.2004. The second ground pleaded seeking eviction was that respondent No.1 had subletted shop in question to respondent No.2 without written consent and approval of the petitioner. Respondent No.2 was in exclusive possession of the shop in question and was independently running business under the name and style of M/s. Suhag Churi Bhandar. Respondent No.1 was charging rent of demised premises from respondent No.2 and has thus parted possession of the demised premises for consideration.

3. Both the respondents contested the petition and filed separate written statements. Respondent No.1 averred that he has no concern with the demised premises. He was never tenant in the said shop. It was further pleaded that respondent No.1 has taken another shop having ground floor as well as first floor where he is running his shop by the name of Super Store since 09.12.2017 at a rent of Rs.7,000/- per month. The said shop was let out by Jagan Nath Bansal. The shop was initially taken for two months. After his business could not flourish, respondent No.1 vacated first floor of the said premises but now has again taken first floor of the same premise on rent w.e.f. 01.04.2006.



4. Respondent No.2 i.e. sub-tenant filed separate written statement claiming that it is Jagan Nath Bansal who is the actual landlord of the shop in question. Jagan Nath Bansal rented out the shop to Raj Kumar Bansal with authority to sublet the same. Raj Kumar Bansal further inducted respondent No.2 as a tenant with consent of Jagan Nath Bansal-landlord.

5. The landlord appeared as PW-2 alongwith Parmod Kumar who appeared as PW-1. PW-1 deed writer was examined to prove the execution of rent note dated 01.12.1997. Respondent No.1 i.e. tenant appeared as RW-2, sub tenant appeared as RW-1, Raj Kumar Bansal appeared as RW-3 and Jagan Nath appeared as RW-4.

6. Rent Controller dismissed the ejectment petition holding that the same is not maintainable for want of consent of co-owner Jagan Nath who supported the case of tenant while appearing as RW-4. Appellate Authority accepted the appeal preferred by the landlord holding that there was no requirement of prior consent of co-owner for maintaining the eviction petition. Jagan Nath the co-owner though appeared as RW-4, but never objected to the landlord filing the eviction petition. RW-4 Jagan Nath admitted in his cross-examination that petitioner Prem Chand was also co-owner of the shop in question. On analyzing evidence on record, Appellate Authority came to the conclusion that there being no documentary evidence to prove that Raj Kumar Bansal was inducted as tenant by Jagan Nath, story projected by the tenant and the sub-tenant with respect to Hans Ran sub-tenant having been inducted by Raj Kumar Bansal with the consent of Jagan Nath has been falsely concocted to



mislead the Court. Thus, Appellate Authority ordered eviction and directed respondent No.2 to handover the vacant possession in question to the petitioner. Civil Revision No.4088-2018 is at the behest of sub-tenant. Civil Revision No.4094-2018 has been filed by tenant.

7. Learned senior counsel appearing for sub-tenant while assailing the impugned order submits that the Appellate Authority erred in holding issue with respect to maintainability of the petition in favour of landlord, despite the fact that co-owner Jagan Nath appeared and supported the case of sub-tenant. He submits that there is overwhelming evidence brought on record to prove that Jagan Nath, the co-owner of the shop inducted Raj Kumar Bansal as a tenant in the demised premises. Jagan Nath testified before the Rent Controller that the shop was let out by Raj Kumar Bansal further to Mahender Pal with his approval. Thus, the question of eviction of petitioner on the ground of subletting does not arise. He further submits that the whole story put forth by the landlord crashed to the floor once landlord himself admitted filing of suit for injunction qua 04 shops adjoining and forming part of the same building. In the said plaint while describing shop at point D in the headnote, he himself pleaded that on the eastern side of the same is situated shop of the landlord on rent with Raj Kumar Bansal. He further refers to the date of filing of the civil suit i.e. 16.01.2007 and submits that the plaint was proved on record as Ex.R-1. The same was put to the landlord who admitted the same. He thus submits that Appellate Authority having erred on the facts as well as on law, the present revision petition deserves to be allowed and the eviction order passed against the petitioner in the present



revision petition deserves to be set aside.

8. *Per contra*, counsel for respondent-landlord submits that both co-owners i.e. the original petitioner in the instant *lis* Prem Chand Bansal and his brother Jagan Nath Bansal are admittedly co-owners of the demised premises. They are at *lis*. Tenant and sub-tenant want to feed on the dispute between co-owners. He submits that execution of rent note with respect to the demised premises on 01.12.1997 was fully proved by Ex.P-1. Signatures thereupon have been admitted by tenant Mahender Pal. A deliberate attempt has been made by tenant and sub-tenant to confuse the issue. Appellate Authority has returned correct finding on facts after appreciating evidence on record. Mahender Pal having admitted his signatures on the register of petition writer claimed that it was with respect to rent note executed qua other shop in his possession. However, the same has been falsified by documents Ex.PW-3/A and Ex.PW-3/B. The other shop was rented out to Mahender Pal in the year 1990 i.e. much prior to 01.12.1997 and the said fact was admitted by Mohinder Pal in reply to the eviction petition filed by him qua that shop.

8A. Learned senior counsel submits that it is evident from record that co-owner Jagan Nath never objected to filing of the eviction petition and thus the plea raised by tenants with respect to non-maintainability of the petition as upheld by the Rent Controller is without any basis. He has further drawn my attention to the pleadings raised in the present case and the testimony of landlord PW-2 to submit that so far as issue with respect to letting out of shop to Prem Chand Bansal and the alleged admission in the plaint filed in the year 2007 is concerned, the same stands fully



explained and the same cannot be read against the landlord.

9. I have heard counsel for the parties and have carefully gone through the records of the case.

10. In order to appreciate the real controversy between the parties, it will be apt to peruse the pleadings. Landlord pleaded in eviction petition as under:-

“xx xx xx

3. That the petitioner as well as Shri Jagan Nath are the landlords-cum-landowners of the shop in question which is fully mentioned and described in the head note of the plaint and situated at Tonga Chowk Jind Tehsil and Distt. Jind.

4. That the shop in question was rented out by the petitioner as well as Shri Jagan Nath to the respondent no.1 on a monthly rent of Rs.7000/- w.e.f. 1-12-1997. A rent note was also executed by the respondent no.1 in favour of petitioner as well as the other co-landlord cum landowner on 9-12-1997. The original rent note is in possession of the other landlords-cum-landowner. A entry of the register of deed writer is attached herewith.

5. That as per terms and conditions of rent note it the was obligatory on the part of respondent no. 1 that he would enhance 20% rent of the expiry of every three years and now the rate of rent is 12016/ upto 30-11-2009. The said fact 15 also in respondent no.1 the knowledge of the respondent No.1.

6. That the respondents are liable to be evicted from the shop in question on the following grounds:

- a) That the respondent paid the arrears no. of 1 has rent not from 1.4.2004 till to date inspite of many repeated requests and demands made by the petitioner.
- b) That the respondent no. 1 has sub-letted the shop in question to the respondent no.2 without the written consent and approval of the petitioner. Moreover the respondent no.2 is in exclusive possession of the shop in question. It is further submitted respondent here that no.2 is now doing



the business independently under the name and style of M/s Suhag Churi Bhandar. The respondent no.1 has no concern, with the said business as well the shop in question. as respondent no.1 has The completely withdrawn his control from the said business. The respondent no. also charging the rent demised shop from the of 1 is the respondent no.2 which he has got no right under the law.”

11. The tenant Mahender Pal in reply to para 4 *ibid* averred as under:-

“4. That in reply to para No. 4 of the petition it is submitted that the petitioner is not the landlord and the answering respondent has taken on rent the ground floor as well as the first floor of (another shop known as Super Store since 09.12.1997- at the monthly rent of Rs. 7,000/- per month for two months from Jagan Nath Bansal and as his business could first not flourish as such he vacated the floor of that premises after two months and now again he has taken the first floor on rent w.e.f. 01.04.2006 of the said premises. It is is specifically stated that petitioner is not the landlord. The answering respondent has no concern with the shop in question as the same was not taken by him on rent rather he is occupying another shop as a tenant known as Super Store.”

12. The sub-tenant responded in the same lines and pleaded as under:-

“xx xx xx

4. That in reply to para No. 4 of the petition it is submitted that the petitioner is not the landlord and the answering Respondent has taken on rent the ground floor since 01.04.1998 at the monthly rent of Rs.7,000/- per month from Raj Kumar Bansal with permission from Jagan Nath Bansal landlord. Mahinder Pal respondent No. 1 has no concern with the said shop as the shop in question was never rented out to him at any point of time.”



13. Landlord filed rejoinder to the written statements filed by both tenant responding to para 4 as under:-

“4. That the contents of para No. 4 of written statements on merits are totally wrong, incorrect and hence denied. However, the contents of para No. 4 of the petition are true, correct and are reiterated. It is denied that the respondent No. 1 has taken the ground floor as well as the first floor of another shop known as Super Store on rent since trying 09.12.1997. The respondent No.1 is trying to mislead this Hon'ble Court. Another shop bearing No.5 in the said building was rented out by the petitioner as well as other co-landlords to respondent No.1 in the year Feb., 1990. An eviction petition in respect of the shop No. 5 is still pending against the respondent No. 1. Moreover a suit for injunction is also pending against the respondent No. 1 and the injunction application filed by the petitioner against respondent No. 1 in that suit was accepted and appeal against the acceptance of the injunction application was also dismissed by the Court of Ld. District Judge Sahib, Jind. It is denied that the shop known as Super Store was rented out to the respondent No. 1 alongwith first floor on 9.12.1997. Rather only the ground floor bearing Shop No. 5 was rented out by the petitioner to the respondent No.1 in the year Feb., 1990. The first floor of Shop No. 5 was never rented out by the petitioner to the respondent No. 1 alongwith the ground floor. Rather the first floor of Shop No.5 was rented out by the petitioner to the respondent No.1 before April, 2004. It is denied that the rate of rent of the Shop of Super Store was 7000/- p.m. It is denied that the first floor of shop No. 5 was vacated by the respondent No.1 after the expiry of two months of 9.12.1997. When the ground floor as well as the first floor was never rented out by the petitioner to the respondent on 9.12.1997. Therefore the question of vacating of first floor of shop No.5 does not arise at all. The respondent No.1 be put to a strict proof in this regard. It is denied that the first floor of shop No.5 was taken by the respondent No.1 on rent w.e.f. 1.4.2006. The respondent No. 1 be put to a strict proof in this regard. After subletting the shop in question by the respondent No.1 to the respondent No.2, the respondent No.1 has no claim concern or interest with the demised premises.”



14. On the similar lines, rejoinder was filed to the reply filed by sub-tenant pleading as under:-

“xx xx xx

4. That the contents of No.4 para of the written statements on merits are totally wrong, incorrect hence and denied. However, the contents of para No.4 of the petition are true, correct and are reiterated. It is denied that the petitioner is not the landlord of the demised premises. It is submitted here that the shop in question was rented out by the petitioner to respondent No. 1 on 1.12.1997 vide written rent note dated 9.12.1997. It is denied that the ground floor of the demised premises was taken on rent by the respondent No.2 on a monthly rent of Rs.7000/- p.m. from Raj Kumar Bansal. Raj Kumar Bansal has no claim concern title or interest after vacating and delivering the possession of the shop in question to the petitioner. After subletting the shop in question by the respondent No. 1 to the respondent No.2, respondent No.1 has no concern with the shop in question. It is denied that the shop in question was never rented out to respondent No. 1 at any point of time.”

15. In the present case, exclusive possession of respondent No.2 over the demised premises is admitted. His status as a sub-tenant is also not in dispute. Prem Chand and Jagan Nath are admittedly co-owners of property in question. The issue is whether petitioner and Jagan Nath both inducted respondent No.1 as tenant in shop who further sub-letted the same to respondent No.2 or respondent No.2 was inducted by Raj Kumar Bansal who is a tenant under Jagan Nath and claims permission to sub-let the demised premises? Apart from the aforesaid factual issue, the legal issue that arises for consideration is:

(i) whether landlord could have maintained the petition without impleading Jagan Nath and without consent of Jagan Nath?



16. Landlord in order to prove his stand claims that Jagan Nath his brother and co-owner is in possession of the rent note dated 01.12.1997 and has tried to prove execution of the rent note on the strength of testimony of PW-1 Parmod Kumar vasika navis. Copy of his register Ex.P-1. The entries at serial No.1025 to 1027 in the register reads as under:-

Date	Sr. No.	Name of Executant	Nature of document		
09.12.1997	1025	Mahender Pal son of Gobind Dass, r/o Jind	Rent Note	Shop Tanga Chowk Jind @ Rs.7000/- per month for two months w.e.f. 01.12.1997	Sd/- Mahender Pal.
09.12.1997	1026	Jagan Nath and Prem Chand, both sons of sh. Bal Mukand, r/o Jind	Mutual Agreement	01.12.1997 Shop situated at Tanga Chowk, Jind	That I shall pay enhanced rent of 20% after every 03 years.
09.12.1997	1027	Mahender Pal son of Gobind Dass, r/o Jind	Pro-note	For Rs.1,80,000/- interest 2% per month	Sd/- Mahender Pal for Raj Kumar Bansal

17. Rent note was not produced. Prem Chand-the landlord claimed that the same was in possession of Jagan Nath who was collecting rent from Mahender Pal acting as his attorney while he was out of town being in service. Mahender Pal while appearing as RW-2 admitted his signatures on Ex.P-1. He however claimed that the same was executed with respect to other shop in his possession where he is running his business under the name and style of Super Store regarding both the floors. He however feigned ignorance on being asked whether both floors have been mentioned in Ex.P-1. He further admitted to the terms as mentioned in the register. Landlord produced eviction petition Ex.PW-3/A filed by him against Mahender Pal with respect to the other shop where he is running Super Store and reply filed by Mahender Pal therein as Ex.PW-3/A. It is evident that in Ex.PW-3/A, Mahender Pal has



been mentioned as Sheru and there is no dispute to the effect that Mahender Pal is known as Sheru as well. In the said petition, pleadings of para No.1 read as under:-

“1. That the petitioner and his brother Jagan Nath respondent no. 2 are the owners and landlords of the double storied shop in question ground floor of which was taken on rent by the respondent no. 1 in February, 1990 @ Rs. 2600/- per month with a further condition to increase the rent @20% after every three years. At present the rent of the shop on ground floor in question is Rs. 7714/- per month. The portion of first floor was given on rent to the respondent no.1 few years ago and the present rate of rent of first floor is Rs. 4956/- per month which is also liable to be increased after every three years @ 20%. An opening from inside was made by removing a portion of roof of ground floor and the respondent no. 1 by temporary stair case uses the first floor. There are stair cases from out side also i.e. from the main road side. The total rent of the shop is 12670/- per month w.e.f 01.12.2005 and previous to it the rate of rent was Rs. 10558/- per month. The rent note was also executed by the respondent no.1 when the shop was originally let out in February, 1990 which is in possession of respondent no. 2 and copy of the same is also in possession of respondent no.1.”

18. The same was responded by Mahender Pal in the following terms:-

“That para No. 1 of the petition is replied that shop in question was taken on rent from Shri Jagan Nath Bansal/landlord and at present the rate of rent of ground floor is Rs. 7714/- per month and the first floor was taken on rent w.e.f. 1.4.2006 @Rs. 4956/- per month i.e. total amounting to Rs. 12670/- per month w.e.f. 1.4.2006 and Sh. Jagan Nath Bansal has been receiving the rent from the answering respondent against proper receipts and no amount of rent is due towards the answering respondent/tenant.”



19. Thus, it is evident that Mahender Pal never denied that in double storied shop No.5 where he is running Super Store, he was continuing as a tenant since February, 1990 and was not inducted on 01.12.1997. Thus, the testimony of Mahender Pal to the effect that Ex.P-1 relates to double storied shop No.5 wherein he is running super store stands falsified. Raj Kumar Bansal who appeared as RW-3 and is one of the vital links in the story projected by sub-tenant also testified falsely. He claims that Jagan Nath executed agreement in his favour in the Court but is not in a position to produce copy thereof. Likewise, Jagan Nath who appeared as RW-4 was also proved to be untruthful with respect to story projected by sub-tenant. He claims that he executed agreement in favour of Raj Kumar, but again pleads inability to produce the same. Both though admitted execution of rent agreement refused to produce the same. Thus, adverse inference has to be drawn.

20. It is evident that though landlord failed to produce rent note but he was able to prove that rent note was executed on 09.12.1997 which has been admitted by tenant Mahender Pal in his testimony. The story put forth by Mahender Pal regarding the rent note pertaining to shop No.5 stands falsified by documentary evidence on record in form of Ex. PW-3/A and Ex.PW-3/B. So far as the story put forth by the tenant and sub-tenant with respect to the land being in possession of Raj Kumar Bansal as tenant under Jagan Nath and further having been let out to Hans Raj, the same is not supported by any cogent evidence. Both RW-3 and RW-4 i.e. Raj Kumar Bansal and Jagan Nath though claimed that there is an agreement with respect to property executed by Jagan Nath in favour of



Raj Kumar Bansal, but again opted not to produce the same. Thus, adverse inference has to be drawn qua the same. Moreover from the testimony of Jagan Nath, it has been proved that the demised premises in question is a part of double storied building having 05 shops. The whole building is owned by both brothers. Landlord in the present case. i.e. Prem Chand Bansal being in service was earlier acting through his attorney i.e. his brother, Jagan Nath, who was also collecting rent on his behalf. Reference can be made to the testimony of Jagan Nath himself, who appeared as RW-4. Now, after power of attorney executed by Prem Chand in favour of Jagan Nath has been cancelled, co-owner Jagan Nath is siding with the tenants, though has not objected to filing of the petition. So far as mentioning of boundary in Ex.R-1 is concerned, the same has been fully explained by the landlord in the rejoinder filed controverting the pleadings raised by tenant and sub-tenant. He corroborated the same in his testimony while appearing as PW-2.

21. The issue with respect to maintainability of the petition has to be answered in favour of landlord. Trite it is that a co-owner can maintain eviction petition even in the absence of consent of the co-owner. The only situation is where there is a cogent objection raised by the co-owner. In the present case though Jagan Nath appeared as RW-4 to support the story put forth by tenant and sub-tenant, yet he nowhere objected to the maintainability of the present petition.

22. Having concluded that Prem Chand Bansal-the original petitioner in the eviction petition is the landlord who inducted Mahender Pal-the tenant and Mahender Pal further subletted the demised premises to



Hans Raj. The next issue that arises is:-

- (i) Whether Prem Chand Bansal could have maintained the eviction petition in the absence of co-owner Jagan Nath?

23. Section 2(c) of Haryana Urban (Control of Rent and Eviction) Act, 1973 defines landlord as under:-

“2(c) "landlord" means any person for the time being entitled to receive rent in respect of any building or rented land whether on his own account or on behalf, or for the benefit, of any other person, or as a trustee, guardian, receiver, executor or administrator for any other person, and includes a tenant who sublets any building or rented land in the manner hereinafter provided, and every person from time to time deriving title under a landlord;”

24. Thus under the Haryana Rent Act, it is not necessary for the landlord to be owner of the tenanted premises. The issue regarding maintainability of eviction petition at the behest of one of the co-owners/co-landlords came up for consideration before Supreme Court in the case of *Sri Ram Pasricha vs. Jagannath* reported as (1976) 4 SCC 178. Dealing with argument against the maintainability of the petition, Apex Court observed as under:-

“XX XX XX

13. It is strenuously submitted by Mr. Tarkunde that unless the landlord is also the absolute owner of the premises, he cannot evict the tenant under section 13(1)(f). Landlord means landlords under the appropriate General Clauses Act and, therefore, since there are other co-sharers the plaintiff alone could not



file the suit for eviction.

14. There are two reasons for our not being able to accept the above submission. Firstly, the plea pertains to the domain of the frame of the suit as if the suit is bad for non-joinder of other plaintiffs. Such a plea should have been raised, for what it is worth, at the earliest opportunity. It was not done. Secondly, the relation between the parties being that of landlord and tenant, only the landlord could terminate the tenancy and institute the suit for eviction. The tenant in such a suit is estopped from questioning the title of the landlord under section 116 of the Evidence Act. The tenant cannot deny that the landlord had title to the premises at the commencement of the tenancy. Under the general law, in a suit between landlord and tenant the question of title to the leased property is irrelevant. It is, therefore, inconceivable to throw out the suit on account of non-pleading of other co-owners as such.

25. The principal question, therefore, is whether the plaintiff being a co-owner landlord can be said to reasonably require the premises for his own occupation within the expression "if he is the owner" in section 13(1)(f).

26. Mr. V.S. Desai reads to us from *Salmond on Jurisprudence* (13th Edn.) and relies on the following passage in Chapter 8 (Ownership), para 46 at page 254:

"As a general rule a thing is owned by one person only at a time, but duplicate ownership is perfectly possible. Two or more persons may at the same time have ownership of the same thing vested in them. This may happen in several distinct ways, but the simplest and most obvious



case is that of co-ownership. Partners, for example, are co-owners of the chattels which constitute their stock-in trade of the lease of the premises on which their business is conducted, and of the debts owing to them by their customers. It is not correct to say that property owned by co-owners is divided between them, each of them owning a separate part. It is an undivided unity, which is vested at the same time in more than one person The several ownership of a part is a different thing from the co-ownership of the whole. So soon as each of two co-owners begins to own a part of the thing instead of the whole of it, the co-ownership has been dissolved into sole ownership by the process known as partition. Co- ownership involves the undivided integrity of what is owned".

27. Jurisprudentially it is not correct to say that a co-owner of a property is not its owner. He owns every part of the composite property along with others and it cannot be said that he is only a part-owner or a fractional owner of the property. The position will, change only when partition takes place. It is, therefore, not possible to accept the submission that the plaintiff who is admittedly the landlord and co-owner of the premises is not the owner of the premises within the meaning of section 13(1)(f). It is not necessary to establish that the plaintiff is the only owner of the property for the purpose of section 13(1)(f) as long as he is a co-owner of the property being at the same time the acknowledged landlord of the defendants. Mr. Tarkunde also submitted that since the Calcutta High



Court has held in *Yogamaya Pakhira v. Santi Subha Bose* [ILR (1968) 2 Cal70] that a permanent lessee is not an owner within the meaning of section 13(1)(f) a co-owner would not be in a better position. We are of opinion that a co-owner is as much an owner of the entire property as any sole owner of a property is. We, however, express no opinion about the case of a permanent lessee as this point does not arise in this appeal.”

25. The same principle was reiterated by Supreme Court in the case of *Pal Singh vs. Sunder Singh* reported as **(1989) 1 SCC 444** observing as under:-

“xx xx xx

10. In *Kanta Goel case* [(1977) 2 SCC 814] this Court followed the decision in *Shri Ram Pasricha v. Jagannath* [(1976) 4 SCC 184]. This Court left open the question as to what would happen if some of the co-owners wanted the tenant to continue contrary to the relief claimed by the claimant co-owner. Relying on the two aforesaid decisions in the facts of this case, in so far as the ratio of the two decisions was concerned, Mr. Rajinder Sachhar contended that as yet there is no principle established by this Court that any one of the co-owners could maintain an action for eviction. In the instant case, it was contended that it was on record that a suit had been filed by Smt. Sham Kaur against the respondent for specific performance of an agreement to sell a portion of the property and for direction to him to execute the sale-deed with respect to a portion of the premises bearing Nos. 2216 to 2222. That suit was decreed by Shri Jaspal Singh, Additional District Judge, Delhi and Sunder Singh was



ordered to execute the sale-deed in favour of the co-owner Smt. Sham Kaur. The High Court however recorded that the case of the parties was that there was an appeal against the judgment and decree and the same was pending and the portion with respect to which the direction has been given was not the portion which is in occupation of the tenant and which is the subject-matter of this eviction petition. It appears that even according to the decree this portion, i.e., 3 rooms and the courtyard in question which is the subject-matter of dispute in the instant case, falls in the share of Sunder Singh who had filed the eviction petition. Furthermore, there is no evidence that other co-tenant the widow, Smt. Sham Kaur or her representatives wanted the appellant to continue. This in our opinion falls within the ratio of *Kanta Goel v. B.P. Pathak* [(1977) 2 SCC 814] where this Court clearly held that when the other co-owner did not object to the eviction one co-owner could maintain an action for eviction even in the absence of other co-owner. Here also Smt. Sham Kaur and her heirs did not object to the claim for eviction made by the respondents herein. In that view of the matter and in the circumstances of this case, we are of the opinion that the ratio of the said case will apply and this suit will be maintainable even in the absence of all the owners to the eviction proceedings.”

26. Dealing with the same issue, Apex Court in the case of *Dhannalal vs. Kalawatibai* reported as (2002) 6 SCC 16 observed as under:-

“xx xx xx

16. It is well settled by at least three decisions of this Court, namely, *Sri Ram Pasricha vs. Jagannath*



[(1976) 4 SCC 184], *Kanta Goel v. B.P. Pathak* [(1977) 2 SCC 814] and *Pal Singh v. Sunder Singh* [(1989) 1 SCC 444] that one of the co-owners can alone and in his own right file a suit for ejectment of tenant and it is no defence open to tenant to question the maintainability of the suit on the ground that other co-owners were not joined as parties to the suit. When the property forming subject matter of eviction proceedings is owned by several owners, every co-owner owns every part and every bit of the joint property along with others and it cannot be said that he is only a part owner or a fractional owner of the property so long as the property has not been partitioned. He can alone maintain a suit for eviction of tenant without joining the other co-owners if such other co-owners do not object. In *Sri Ram Pasricha vs. Jagannath* [(1976) 4 SCC 184] reliance was placed by the tenant on the English rule that if two or more landlords institute a suit for possession on the ground that a dwelling house is required for occupation of one of them as a residence the suit would fail; the requirement must be of all the landlords. The Court noted that the English rule was not followed by the High Courts of Calcutta and Gujarat which High Courts have respectfully dissented from the rule of English law. This Court held that a decree could be passed in favour of the plaintiff though he was not the absolute and full owner of the premises because he required the premises for his own use and also satisfied the requirement of being "if he is the owner", the expression as employed by Section 13(1)(f) of W.B. Premises Tenancy Act, 1956.

17. It follows that a widow, who is a co-owner and landlady of the premises can in her own right initiate



proceedings for eviction under Section 24-A(b), as analysed hereinbefore, without joining other co-owners/co-landlords as party to the proceedings if they do not object to the initiation of proceedings by such landlady, because she is the owner of the property and requires the tenanted accommodation for the purpose of continuing or starting the business of any of her major sons. The major sons though co-owners/co-landlords may not have been joined as party to the proceedings but it would not adversely affect the maintainability of the proceedings. It would also not make any difference if they are also joined as party to the proceedings. Their presence in the proceedings is suggestive of their concurrence with the widow landlady maintaining the proceedings in her own right. The presence of such co-landlords, as co-plaintiffs or co-applicants, as are not classified landlords as defined in Section 23-J of the Act does not alter the nature of claim preferred by the widow landlady and therefore does not take the proceedings out of the scope of Section 23-A(b). Conversely, the major sons or any of them suing alone without joining a widow co-landlord as party to the proceedings may institute a suit before a Civil Court under Section 12 of the Act pleading that the non-residential premises were required bona fide by them or any of them for the purpose of continuing or starting their own or his own business as they would be owners thereof and the requirement will be theirs. It would not make any material difference if the widow co-landlord was joined as party to the proceedings either as plaintiff or as co-applicant because the case pleaded in the plaint would squarely fall within the ambit of clause (f) sub-Section (1) of Section 12 of the Act.”



27. In the case of *India Umbrella Mft. Co. vs. Bhagabandei Agarwalla reported as (2004) 3 SCC 178*, Apex Court was dealing with another offshoot of the same proposition. One of the co-owners withdrew her consent in the midst. Supreme Court observed as under:-

“xx xx xx

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. Jagannath [(1976) 4 SCC 184] and Dhannalal v. Kalawatibai & Ors. [(2002) 6 SCC 16], SCC para 25). 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.”

28. The principle reiterated in *Dhannalal’s case (supra)* was

further relied upon by Supreme Court in the case of *Kasthuri*



Radhakrishnan vs. M. Chinniyan reported as **(2016) 3 SCC 296** wherein the Supreme Court observed as under:-

“xx xx xx

35) Likewise, so far as issue pertaining to joinder of all co-owners in eviction petition filed against the tenant under the Rent Laws is concerned, the same also remains no more res Integra and stands settled by several decisions of this Court. In **Dhannalal v. Kalawathibai Ors.**, (Supra), this Court took note of all case laws on the subject and explained the legal position governing the issue. Justice R.C.Lahoti (as His Lordship then was) speaking for the Bench held in paragraph 16 as under

“16. It is well settled by at least three decisions of this Court, namely, **Sri Ram Pasricha vs. Jagannath, 1976 RCR (Rent) 832 : (1976) 4 SCC 184 Kanta Goel v. B.P. Pathak, 1979(1) RCR (Rent) 485 : (1977) 2 SCC 814 and Pal Singh v. Sunder Singh, 1989(2) RCR (Rent) 331 : (1989) 1 SCC 444** that one of the co-owners can alone and in his own right file a suit for ejectment of the tenant and it is no defence open to the tenant to question the maintainability of the suit on the ground that the other co-owners were not joined as parties to the suit. When the property forming the subject-matter of eviction proceedings is owned by several owners, every co-owner owns every part and every bit of the joint property along with others and it cannot be said that he is only a part-owner or a fractional owner of the property so long as the property has not been partitioned.



He can alone maintain a suit for eviction of the tenant without joining the other co-owners if such other co-owners do not object. In Sri Ram Pasricha case reliance was placed by the tenant on the English rule that if two or more landlords institute a suit for possession on the ground that a dwelling house is required for occupation of one of them as a residence the suit would fail; the requirement must be of all the landlords. The Court noted that the English rule was not followed by the High Courts of Calcutta and Gujarat which High Courts have respectfully dissented from the rule of English law. This Court held that a decree could be passed in favour of the plaintiff though he was not the absolute and full owner of the premises because he required the premises for his own use and also satisfied the requirement of being “if he is the owner”, the expression as employed by Section 13(1)(f) of the W.B. Premises Tenancy Act, 1956.”

36) The issues involved in this case need to be decided keeping in view the law laid down in the aforesaid three cases and the one cited infra.

37) Coming to the first question, in our considered opinion, the High Court erred in holding that the daughter of late A. Radhakrishnan, i.e., Tmt. R. Kanjana was a necessary party to the eviction petition filed by the appellants and hence failure to implead her rendered the eviction petition as not maintainable. This finding of the High Court, in our view, is against the law laid down by this Court in the case of Dhannalal (supra), wherein it is laid down that it is not necessary



to implead all the co- owners in the eviction petition.

38) In the light of law laid down in the case of Dhannalal (supra), in our view, it was not necessary for the appellants to implead the Tmt. R. Kanjana – the daughter of late A. Radhakrishnan in the eviction petition. Even otherwise, as rightly argued by learned counsel for the appellants, the High Court should not have allowed respondent No.1 to raise such objection for the first time in the revision because it was not raised in the courts below. Be that as it may, the daughter having been later impleaded in the proceedings, this objection was not even available to respondent No.1.

39) In view of foregoing discussion, we can not concur with the finding of the High Court and while reversing the finding hold that the eviction petition can not be dismissed on the ground of non-joinder of Tmt. R. Kanjana – the daughter of late A. Radhakrishnan and is held maintainable.”

29. Recently, while dealing with the application filed under Order 1, Rule 10 Supreme Court in ***Kanaklalta Das v. Naba Kumar Das*** reported as ***(2018) 2 SCC 352*** culled out various principles related to eviction petitions and the necessary parties thereto observing as under:-

“11. There are some well-settled principles of law on the question involved in this appeal, which need to be taken into consideration while deciding the question arose in this appeal. These principles are mentioned infra:

11.1. First, in an eviction suit filed by the plaintiff (Landlord) against the defendant(Tenant) under the State Rent Act, the landlord and tenant are the only



necessary parties for the decision of the suit, namely, the landlord and the tenant.

11.2. Second, the landlord (plaintiff) in such suit is required to plead and prove only two things to enable him to claim a decree for eviction against his tenant from the tenanted suit premises. First, there exists a relationship of the landlord and tenant between the plaintiff and the defendant and second, the ground(s) on which the plaintiff-landlord has sought defendant's-tenant's eviction under the Rent Act exists. When these two things are proved, eviction suit succeeds.

11.3. Third, the question of title to the suit premises is not germane for the decision of the eviction suit. The reason being, if the landlord fails to prove his title to the suit premises but proves the existence of relationship of the landlord and tenant in relation to the suit premises and further proves existence of any ground on which the eviction is sought under the Tenancy Act, the eviction suit succeeds. Conversely, if the landlord proves his title to the suit premises but fails to prove the existence of relationship of the landlord and tenant in relation to the suit premises, the eviction suit fails. (See *Ranbir Singh v. Asharfi Lal* [*Ranbir Singh v. Asharfi Lal*, (1995) 6 SCC 580].)

11.4. Fourth, the plaintiff being a dominus litis cannot be compelled to make any third person a party to the suit, be that a plaintiff or the defendant, against his wish unless such person is able to prove that he is a necessary party to the suit and without his presence, the suit cannot proceed and nor can be decided effectively. In other words, no person can compel the plaintiff to allow such person to become the co-plaintiff or defendant in the suit. It is more so when



such person is unable to show as to how he is a necessary or proper party to the suit and how without his presence, the suit can neither proceed and nor it can be decided or how his presence is necessary for the effective decision of the suit. (See *Ruma Chakraborty v. Sudha Rani Banerjee* [*Ruma Chakraborty v. Sudha Rani Banerjee*, 2005(8) SCC 140].)

11.5. Fifth, a necessary party is one without whom, no order can be made effectively, a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. (See *Udit Narain Singh Malpaharia v. Board of Revenue* [*Udit Narain Singh Malpaharia v. Board of Revenue*, AIR 1963 786].)

11.6. Sixth, if there are co-owners or co-landlords of the suit premises then any co-owner or co-landlord can file a suit for eviction against the tenant. In other words, it is not necessary that all the owners/landlords should join in filing the eviction suit against the tenant. (See *Kasthuri Radhakrishnan vs. M. Chinniyan* [*Kasthuri Radhakrishnan vs. M. Chinniyan*, 2016(3) SCC 296] : (2016) 2 SCC (Civ) 331].)

12. Keeping in mind the aforementioned well settled principles of law and on examining the legality of the impugned order, we find that the impugned order is not legally sustainable and hence deserves to be set aside.”

30. Applying the aforesaid principles of law to the present case, this Court finds that even though Jagan Nath appeared as RW-4, but in whole of his testimony, he nowhere objected to filing of the eviction petition by Prem Chand Bansal. Thus, in the absence of there being any



objection by the co-owner against filing of the present eviction petition, this Court finds that the objection raised with respect to the maintainability of the present petition for non-joining co-owner Jagan Nath cannot be sustained.

31. The other ground for eviction is non-payment of rent. Admittedly, both the tenant as well as sub-tenant denied the relationship. Thus, they cannot claim opportunity to make non-payment of rent good. Admittedly, they did not pay rent to the original petitioner Prem Chand Bansal, they are ordered to be evicted on the ground of non-payment of rent as well.

32. Counsel for the petitioner in CR-4094-2018 on being asked as to how he has filed the present revision petition once specific stand was taken by him before the Rent Controller that he has no concern with the demised premises, submits that the present revision petition has been filed only to meet technical objection, if any, raised by the landlord.

33. As a sequel of the aforesaid discussion, this Court finds that respondent-tenant and sub-tenant have made a deliberate attempt to mislead the Court by creating confusion. In knitting this cobweb, they were aided by Raj Kumar Bansal who has monetary transactions with respondent Mahender Pal and Jagan Nath (brother and co-owner of the landlord-petitioner). The falsity of all the 04 witnesses is evident on the record. Landlord having proved his case and the sub-tenant being in exclusive possession for consideration not in dispute, the present revision petitions are dismissed.



34. A photocopy of this order be placed on the file of other connected case.
35. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

29.08.2024
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	Yes