

131 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-458-2024

Date of Decision: 25.01.2024

Arun Kumar

...Petitioner

Versus

Chandan Bala Jain and others

...Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Aayush Gupta, Advocate
for the petitioner.

GURBIR SINGH, J.

1. The present revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 18.12.2023 passed by the Ld. Rent Controller, Ludhiana whereby application filed by the petitioner for production of original Will for inspection by the handwriting expert, has been dismissed.

2. The brief facts as culled out from the present petition are that respondent No.1 filed the petition under Section 13 of the East Urban Rent Restriction Act, 1949 for ejectment of petitioner and the proforma respondents from the shop in question. As per case of respondent No.1 she has become the owner of the property in question on the basis of the Will dated 02.02.2013 executed in her favour by her late husband. Therefore, on the basis thereof, the ejectment petition (Annexure P-1) was filed on the ground of non-payment of rent and bona fide necessity. In reply (Annexure P-2) petitioner specifically denied the alleged Will in favour of respondent No.1 on the ground that the same is a forged and fabricated document. Petitioner also filed suit for declaration (Annexure P-3) challenging the Will in question. The petitioner

filed an application for staying the rent petition till the decision of the suit, which was dismissed by the trial Court vide order dated 17.11.2023 (Annexure P-4). Thereafter, petitioner filed an application dated 08.12.2023 (Annexure P-5) for production of the original will dated 02.02.2013 alleged to have been executed in favour of respondent No.1 by her husband for the purpose of inspection by the handwriting expert. Respondent filed reply submitting that petitioner has no locus standi to challenge the Will and the learned Rent Controller dismissed the application vide order dated 18.12.2023 on the ground that since earlier application for stay of the proceedings has been dismissed, therefore, there is no ground to issue directions for the production of the original Will.

3. Learned counsel for the petitioner submits that it is a specific case of respondent No.1 that on the basis of Will dated 02.02.2013 she has become owner/landlady of the property. The petitioner filed the reply and specifically pleaded that the said Will is a forged and fabricated document. The petitioner is leading the evidence and it is necessary to prove that Will in question is a forged and fabricated document. The original Will is required to be produced for the purpose of examination by the handwriting expert, namely Dr. Inderjit Singh, to prove that Will is forged and fabricated document. The withholding of the Will from the Court itself establishes that the said Will is a forged and fabricated document.

4. I have heard the learned counsel for the petitioner and have gone through the paper-book.

5. Respondent No.1/Smt. Chandan Bala Jain filed a petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 for ejectment of the petitioner and perform respondent Nos.2 to 4 from the shop as mentioned in the said petition on the ground that shop was on rent previously

under Sh. Janak Raj owner/landlord of the said premises, who bequeathed the property in favour of his wife i.e. respondent No.1/Smt. Chandan Bala Jain by executing a legal Will dated 02.02.2013 in the sound disposing mind during his lifetime. Sh. Janak Raj Jain owner/landlord died on 04.09.2013. After his death, respondent No.1 became owner/landlady of the said premises. By operation of the law, relation of the landlady and tenant came into existence between respondent and petitioner No.1 Manmohan Lal, No.2 Arun Kumar and No.3 Anil Kumar Gupta, respectively. The property is also transferred in her name in the record of Municipal Corporation, Ludhiana. M/s A.K. Sales Corporation through its partner Arun Kumar, in his personal capacity has also filed a suit against Smt. Chandan Bala widow of Sh. Janak Raj Jain, for declaration that Will dated 02.02.2013 having been relied upon by the respondent/defendant executed by Sh. Janak Raj Jain in respect of all his properties is complete forgery as it was never executed by deceased Janak Raj Jain. In the said suit specific plea was taken that M/s A.K. Sales Corporation initially consisting of three partners including the petitioner took on rent one shop forming part of the property at monthly rate of Rs.700/- from deceased Janak Raj Jain, who died on 04.09.2013. In reply to the rent petition plea taken is that it is M/s A.K. Sales Corporation, is tenant in the shop in dispute consisting of three partners i.e. Manmohan Lal, Arun Kumar HUF and Anil Kumar Gupta. In the civil suit (Annexure P-3) Arun Kumar is shown as partner whereas in the reply (Annexure P-2) to the rent petition pleas is that Arun Kumar HUF is one of the partners of M/s. A.K. Sales Corporation. The pleas raised by the petitioner are inconsistent. Since respondent No.1 is the widow of Janak Raj Jain who has died so on his death respondent No.1 being widow obviously is entitled to inherit his estate by way of natural succession, if Will is executed by him then on the basis of the Will. In other words, she has stepped

into shoes of her deceased husband Janak Raj Jain in both the eventualities and has become landlady of the shop in dispute. So, she has got right to file a rent petition. A tenant cannot be permitted to deny the title of the landlady during the continuance of the tenancy and there is estoppel to deny such title as per provision of Section 116 of the Indian Evidence Act, 1872 which is as under:-

“116. Estoppel of tenant; and of licensee of person in possession.—No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given.”

6. Since respondent/landlady is a widow of landlord so tenant cannot ask her to produce the original Will for the purpose of examination by the expert. Thus, I am of the view that petitioner being a tenant has no right to ask the respondent/landlady to prove the Will on the basis of which property is bequeathed upon her especially when she has also right to inherit the property from her deceased husband/landlord by way of natural succession. So, there is no ground to interfere with the impugned order passed by the Ld. Rent Controller.

7. Accordingly, there is no merit in the present petition and the same is hereby dismissed in limine.

25.01.2024

Parveen kumar

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned :Yes/No
Whether reportable :Yes/No