

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

140

CR-3003-2024 (O&M)
Date of decision : 24.07.2024

Sapan Giri Petitioner

versus

Bajrang Aggarwal and another Respondents

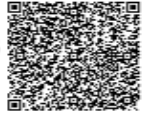
CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Amit Mehta, Advocate
for the petitioner.

Mr. Divanshu Jain, Advocate
for the respondents.

PANKAJ JAIN, J. (Oral)

1. Tenant is in revision aggrieved of the order passed by the Appellate Authority dated 16.02.2024, whereby the petitioner has been directed to vacate and hand over vacant peaceful possession of the tenanted premises to the petitioners-landlords. For convenience, parties hereinafter are referred to by their original position before the Rent Controller i.e. tenant as the respondent and the landlord as petitioner.
2. Petitioner/landlord filed petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (as extended to Chandigarh) claiming that they are owners of the demised premises to the extent of 50% share of the first floor in SCO No.104, Sector 35-C, Chandigarh on the strength of sale deed dated 02.11.2011. The eviction was sought pleading bonafide need on the ground that the petitioners were themselves working in the tenanted premises. They need the demised premises for their own use and occupation and further on the



ground of arrears of rent. The eviction petition was resisted by the respondents-tenants on the ground that the petitioner was merely co-owner and in the absence of there being any consent from the co-owners, the petition was not maintainable. Initially, Rent Controller framed following three issues:-

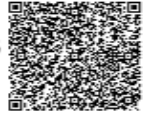
- “1. Whether respondent is liable to be ejected from the demised premises on ground of arrears of rent, as prayed for? OPP
2. Whether respondent is liable to be ejected from the demised premises on ground of bonafide personal necessity, as prayed for? OPP
3. Relief.”

3. Later on vide order dated 26.04.2018, additional issue No.1-A was framed which reads as under:-

“1-A Whether petitioners had taken consent from the co-owners of SCO No.104, Sector 35-C, Chandigarh for filing the present petition against respondent? OPR”

4. Rent Controller decided issue No.1-A against the landlords. Issue No.2 with respect to bonafide need pleaded by the landlords was also decided against the landlords.

5. In appeal preferred by the landlords, findings on both the issues have been reversed. Mr. Mehta counsel for the tenant while assailing the findings recorded by the Appellate Authority submits that despite the fact that one of the co-owner appeared and deposed absence of consent in favour of the landlords, yet finding on issue No.1-A has been reversed. He submits that once one of the co-owner appeared and deposed before the Rent Controller that he did not consent to the eviction of the tenant, Appellate Authority ought to have rejected the



eviction petition on the said ground. He further submits that the landlord (co-owner) had sufficient accommodation with him and even finding on issue No.2 are bad and the same deserve to be reversed.

6. *Per contra*, Mr. Jain at the outset has produced the copy of the order dated 14.05.2024 which shows that the warrants of possession qua the demised premises were issued by the Executing Court for 03.07.2024 and the same stands executed on 21.05.2024, wherein the tenant suffered a statement that he is handing over the vacant possession as per the directions issued by the Court. He further draws attention of this Court to the statement suffered by tenant while appearing as RW-1 wherein he admitted that after purchasing 10% of share of SCO in question, the petitioner in the rent petition became landlord of the tenanted premises and he further admitted that he paid rent of the rented premises to the petitioner. He thus submits that once tenant himself admitted of having paid the rent of the demised premises to the petitioners-landlords, he cannot be allowed to turn back and plead incapacity of his own landlord to maintain the present petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (as extended to Chandigarh).

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

8. Mr. Mehta does not dispute that the possession already stands handed over to the landlord in execution of the eviction order.

9. So far as the plea raised by Mr. Mehta with respect to absence of consent of the other co-owners, it needs to be observed that trite it is that it is not the absence of the consent of the co-owners that



can effect maintainability of the eviction proceedings but only the objection raised by the co-owner. Admittedly, it is not a case of objection raised by any co-owner, but it is only the alleged absence of the consent of the other co-owners.

10. There is another way of looking at the proposition in the peculiar facts and circumstances of the present case. Under The East Punjab Urban Rent Restrictions Act 1949, landlord has been defined under Section 2(c) which reads as under:-

“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 authorised, and, every person from time to time deriving title under a landlord;”

11. Thus, the landlord necessarily need not be the owner. In the present case, the respondent-landlord purchased 10% share in SCO No.104, Sector 35-C, Chandigarh. Petitioner-tenant while appearing as RW-1 stated as under:-

“Petitioners purchased 10% share of SCO No.104, Sector 35-C, Chandigarh. It is correct that after purchasing 10% share of SCO in question, petitioners became my landlord of the tenanted premises. I paid the rent to the petitioners of the rented premises, volunteered; the rent of some month is pending.”



12. The doctrine of attornment of the transferee of his landlord by the tenant stands embodied in Indian law under Section 109 of the Transfer of Property Act, 1882 which reads as under:-

“109. Rights of lessor’s transferee.—If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him:

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.

The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased.”

13. The same was elaborately explained by Supreme Court in ***Uppalapati Veera Venkata Satyanarayanraju v. Josyula Hanumayamma AIR 1967 SC 174***, wherein explaining the statutory attornment, Supreme Court observed as under:-

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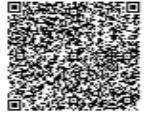
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14. “Attornment, in its strict sense, is an agreement of the tenant to a grant of the reversion made by the landlord to another, or, as it has been defined', 'the act of the tenants putting one person in the place of another as his landlord’”- see para 732, *Foa's General Law of Landlord and Tenant*. This means that in the first instance attornment is made in favour of the person who has derived his title or supposed' title from the Original landlord. It implies a continuity of the tenancy created by the original landlord in favour of the tenant. It is in these circumstances that the existing tenant, for the rest of the period of his Tenancy, agrees to acknowledge the new landlord as his landlord. Such an agreement of the tenant amounts to attornment and by such an attornment the tenant by his act substitutes the new landlord in place of the previous one. Such attornment is complete the moment the tenant agrees to acknowledge the new landlord to be his landlord. Any future payment or non-payment of rent does not affect the relationship created by the attornment. The new landlord will have his remedies with respect to the rents falling in arrears.

Again, it is stated in para 745 at page 475 :

"With regard to the title of person from whom the possession was not obtained, but who has been recognised as landlord by the tenant, such recognition may be by express agreement, by attornment, or other formal acknowledgment (as

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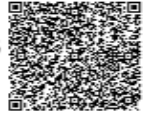
by paying a nominal sum of money), by payment of rent, or of a nominal sum as rent, or by submission to a distress."

The attornment is here described as one mode of recognising a person as one's landlord, just as payment of rent is another mode for the purpose. Expression to similar effect is to be found in paragraphs 746, and also 747 where it is further noted :

"But the tenant is not allowed to impeach the title of a person to whom he has paid rent, or whose title he has otherwise recognised, without showing a better title in some other person. Thus he cannot, after attorning to a person who derives his title under a will, contend merely that upon a true construction of the will he had no title; nor can he, after paying him rent, dispute his title merely on the ground that the devise to him was void, owing to the incapacity of the testator."

15. In *Kumar Raj Krisna Prosad Lal Singha Deo v. Baraboni Coal Concern, Limited* [LR 64 IA 311] the Privy Council said at p.318, when considering the scope of Section 116 of the Indian Evidence Act:

"Whether during the currency of a term the tenant by attornment to A who claims to have the reversion, or the landlord by acceptance of rent from B who claims to be entitled to the term, is estopped from disputing the claim which he has once admitted, are important questions, but they are instances of cases which are outside Section 116 altogether."



And again, at p. 319:

"In the ordinary case of a lease intended as a present demise-which is the case before the Board on this appeal-the section applies against the lessee, any assignee of the term and any sub-lessee or licensee. What all such persons are precluded from denying is that the lessor had a title at the date of the lease, and there is no exception even for the case where the lease itself discloses the defect of title. The principle does not apply to disentitle a tenant to dispute the derivative title of one who claims to have since become entitled to the reversion, though in such cases there may be other grounds of estoppel, e.g., by attornment, acceptance of rent etc. In this sense it is true enough that the principle only applies to the title of the landlord who let the tenant in' as distinct from any other person claiming to be reversioner."

16. These observations make it clear that simply by attornment the tenant is estopped from questioning the derivative title of the claimant's successor just as the acceptance of rent will create an estoppel against the landlord from denying the person, who paid the rent, to be his tenant. These observations do not indicate that any actual payment of rent by the tenant who has attorned is necessary to make the attornment effective. If it was otherwise, the new landlord in whose favour the tenant has attorned, will not be able to take successfully any action against that person till that person had made the first payment of rent.

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17. I am therefore of opinion that once the tenant has agreed to accept the person claiming title from the previous landlord, that amounts to effective attornment in favour of the landlord and- is no more dependent on the future conduct of the tenant by way of payment of rent or otherwise.”

14. The said view was further followed in ***Apollo Zipper India Ltd. vs. W. Newman & Co. Ltd. (2018) 6 SCC 744***, wherein Supreme Court held as under:-

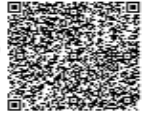
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39. The first question that arises for consideration in this appeal is whether the respondent attorned to the appellant or whether the appellant is required to prove their title over the suit premises or whether there exists any doubt or confusion over the issue of title of the suit premises so as to grant leave to defend to the respondent to probe these questions elaborately on merits in the summary suit filed by the appellant against the respondent for eviction.

40. It is a settled principle of law laid down by this Court that in an eviction suit filed by the landlord against the tenant under the Rent Laws, when the issue of title over the tenanted premises is raised, the landlord is not expected to prove his title like what he is required to prove in a title suit.

41. In other words, the burden of proving the ownership in an eviction suit is not the same like a title suit. (See *Sheela v. Firm Prahlad Rai Prem Prakash* [*Sheela v. Firm Prahlad Rai Prem Prakash* (2002) 3 SCC 375], para 10 at SCC p. 383 and also *Boorugu Mahadev & Sons v. Sirigiri Narasing Rao*, (2016) 3 SCC 343 : (2016) 2 SCC (Civ) 344], para

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18 at p. 349).

42. Similarly, the law relating to derivative title to the landlord and when the tenant challenges it during subsistence of his tenancy in relation to the demised property is also fairly well settled. Though by virtue of Section 116 of the Evidence Act, the tenant is estopped from challenging the title of his landlord, yet the tenant is entitled to challenge the derivative title of an assignee of the original landlord of the demised property in an action brought by the assignee against the tenant for his eviction under the Rent laws. However, this right of a tenant is subject to one caveat that the tenant has not attorned to the assignee. If the tenant pays rent to the assignee or otherwise accepts the assignee's title over the demised property, then it results in creation of the attornment which, in turn, deprives the tenant to challenge the derivative title of the landlord. [See *Bismillah Be v. Majeed Shah* [*Bismillah Be v. Majeed Shah*, (2017) 2 SCC 274 : (2017) 1 SCC (Civ) 639], para 24.)

43. It is equally well-settled law with regard to attornment that it does not create any new tenancy but once the factum of attornment is proved then by virtue of such attornment, the old tenancy continues. (See *Uppalapati Veera Venkata Satyanarayanaraju & Anr. Vs. Josyula Hanumayamma & Anr.* AIR 1967 SC 174].)”

15. Applying the aforesaid principles of law to the present case, once the tenant himself admitted that he was paying rent to the petitioner-landlord who maintained the petition under Section 13 of the Act after he purchased the same, it is evident that he attorned the



petitioner-landlord as his landlord. Having attorned, the tenant cannot be allowed to turn back and question the right of his own landlord. Reference can be made to Section 116 of the Evidence Act.

16. So far as ground of bonafide need is concerned, the need pleaded is that the landlord needs the premises for running his business by joining two cabins. The only plea raised is with respect to concealment of the fact that the landlord is already in possession of third cabin. The requirement of the law is for the landlord to plead and prove that he is not occupying another building in the urban area concerned and has not vacated such a building without sufficient cause after the commencement of this Act in the said urban area. The landlord in the eviction petition has pleaded that he wants to join the two cabins as he requires larger cabin for his need. Once the projected need of the landlord itself is that he wants to shift to his own premises as at present he is running his business from tenanted premises, it cannot be said that he concealed the fact of occupation of third cabin as is being claimed by the tenant.

17. In view of above, this Court does not find any infirmity in the finding recorded by the Lower Appellate Court on issue No.2 and to interfere in the present revision petition. Consequently, the same is hereby dismissed.

18. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

24.07.2024

Dinesh

Whether speaking/reasoned :
Whether Reportable :

Yes
Yes