

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-2317-2022 (O&M)

Date of Decision: March 04, 2024

Pankaj Bansal

...Petitioner

Versus

Kulbhushan Jain

...Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Vansh Chawla, Advocate
for the petitioner.

Ms.Neha Jain, Advocate
for the respondent.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 22.04.2022 (Annexure P-6), passed by learned Rent Controller, whereby, an application for dismissal of the petition being not maintainable or in the alternative framing the preliminary issue regarding maintainability of the petition, has been allowed.

The material facts, as culled out from the paperbook, are as follows:-

That, initially, petitioner-landlord Pankaj Bansal had filed a petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949, thereby, seeking ejectment of the respondent-defendant, from the shop measuring 53 sq. yards, having dimensions of 15' x 32', as detailed in the

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headnote of the ejectment petition, copy whereof is Annexure P-1. In pursuance of the notice issued, respondent-tenant, made appearance and filed reply.

During the pendency of the ejectment petition, respondent-tenant filed an application, thereby, seeking dismissal of the petition, being not maintainable or in the alternative, framing the preliminary issue, regarding maintainability of the petition. In the said application, it was averred that Pankaj Bansal had filed the ejectment petition, qua the premises measuring 15' x 32', situated at Ahmedgarh, on the grounds of arrears of rent, personal necessity etc. and the rate of rent of the demised premises was claimed to be Rs.500/- per month. However, it was averred that there is no alleged premises measuring 15' x 32' and no such alleged tenancy qua 15' x 32' feet was ever created. Rather, real facts averred were that father of the respondent (tenant) namely Tek Chand, took one shop on rent from Purshotam Lal, Dharam Pal, Ram Chand and Purnanand, measuring 32' x 32', without any intervening walls, being a single shop, on rent of Rs.4000/- per annum. After the death of respondent's father Tek Chand, the respondent came into possession of the abovesaid shop measuring 32' x 32'. The fact about single tenancy of the shop measuring 32' x 32' @ Rs.4000/- per annum, has been admitted in earlier round of litigation between the parties. The detail of the said litigation, as mentioned in the application, is herein given:-

- i) Civil Suit No.1253 of 28.10.1993 decided on 23.08.1996 titled as Purshotam Lal etc vs. Tek Chand.
- ii) Rent Petition No.15 of 27.01.1994 decided on 27.03.1998 titled as Tek Chand vs. Purshotam Lal etc.

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iii) Rent Petition No.115 of 10.11.1994 decided on 20.08.1998 titled as Purshotam Lal etc. vs. Tek Chand.

Even, in the application, it is averred that in the aforesaid litigation, Dharam Pal Bansal was also a party and as such, the petitioner-landlord is fully aware of the aforesaid facts. Now, Pankaj Bansal had filed the eviction petition only qua 15' x 32' out of said above shop, claiming its rent to be Rs.500/- per month, which is not maintainable, at all. As such, a prayer was made for dismissal of the ejectment petition on the ground of being not maintainable or in the alternative, issue regarding maintainability of the petition be framed.

In reply, it is averred by the petitioner that father of the respondent Tek Chand took property measuring 32' x 32' i.e. two shops on rent, from Purshotam Lal and Purnanand @ Rs.4000/- per annum. After that, Purshotam Lal and Purnanand, jointly transferred their share in one shop, measuring 53 sq. yards (which is demised premises), vide registered transfer deed No.996 dated 24.12.2015, to Dharam Pal Bansal (since deceased), who was father of the present petitioner. In the month of April, 2016, the respondent had orally settled the rent of demised shop, measuring 15' x 32', with Dharam Pal Bansal @ Rs.500/- per month and respondent became tenant, under Dharam Pal Bansal of the demised shop. Later on, respondent also started paying rent of demised shop to Dharam Pal Bansal, at this rate, but he is in arrears of rent, since June 2016. As such, it is submitted that the ejectment petition is maintainable and a prayer was made for dismissal of the application.

After hearing learned counsel for both the parties, in the

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impugned order, it was observed by learned Rent Controller that the question with regard to there being two distinct shops, leased out to father of the respondent or about the single shop having leased out to the father of the respondent and that petitioner-landlord is seeking ejectment, only of half portion, after splitting the tenancy, is a question, which is a matter of evidence and can only be decided, after the parties lead evidence on this point. But however, two preliminary issues were framed, which reads as follows:-

1. Whether the present petition is maintainable? OPA
2. Whether the present petition is bad as the petitioner has split the tenancy and claimed ejectment of the respondent out of one of the portions of the tenancy? OPR

For evidence, on the preliminary issues, the case was fixed for further date.

Feeling aggrieved with the aforesaid order, the petitioner (landlord before learned Rent Controller) has filed the present revision petition.

Learned counsel for the parties heard.

The copy of the ejectment petition filed before learned Rent Controller is placed on record as Annexure P-1. Perusal of the same reveals that the ejectment petition was filed qua one shop measuring 53 sq. yards, dimensions whereof, has been mentioned as 15' x 32'. In paragraph No.2 of the said petition, there is specific mention made about two shops measuring 32' x 32', having rented out to Tek Chand, father of the respondent, at first instance, @ Rs.4000/- per annum. Further, there are also averments with regard to one shop measuring 53 sq. yards (15' x 32'), having transferred to

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father of the petitioner by registered ownership deed dated 24.12.2015 and thus, the ejectment petition, is with regard to this shop, having transferred in the name of Dharam Pal Bansal, father of the petitioner.

However, in reply, assertion is with regard to splitting of the tenancy, as it is alleged that the property measuring 32' x 32' is one single shop and while splitting the tenancy of half shop, the ejectment petition has been filed. In the application, as already observed aforesaid, there is stated to be an earlier round of litigation, where of the fact of tenancy to be single, relating to shop measuring 32' x 32', is spelt out. Only on this ground, the present application has been filed to dismiss the ejectment petition, on the ground of maintainability or to frame preliminary issue.

Perusal of the impugned order reveals that learned Rent Controller had correctly observed that question, whether single shop was leased out to father of the respondent (tenant) or two distinct shops, under two different contracts were leased out to the father of the respondent-tenant, is matter of evidence and can only be decided, after the parties will lead evidence on this point. Also, it has been correctly observed that it is a matter of evidence, whether exception to the rule of splitting of tenancy that where splitting of tenancy is created by operation of law, is applicable in this case or not. However, while so correctly observing, learned Rent Controller had further erroneously framed two preliminary issues, the detail whereof, has been given in the earlier portion of the judgment.

Sub-rule (2) of the Order 14 Rule 2 CPC lays down that where issues both of law and of fact arise in the same suit and the Court is of opinion that the case or any part thereof, may be disposed of on an issue of

law only, it may try that issue first, if that issue relates to (a) the jurisdiction of the Court, or (b) a bar to the suit created by any law for the time being in force. However, under Order 14 Rule 2, where issues both of law and of fact arise in the same suit and the Court is of the opinion that the case or any part thereof, may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact, until after the issue of law have been determined. The jurisdiction to try issues of law apart from the issues of fact, may be exercised, only where in the opinion of the Court, the whole suit may be disposed of on the issue of law alone, but CPC confers no jurisdiction upon the Court to try a suit on mixed issues of law and fact, as preliminary issues. Normally, all the issues in a suit should be tried by the Court, but not to do so, when the decision on issues, even of law, depends upon the decision of issues of fact. When there is mixed question of law and fact, it cannot be treated as preliminary issue.

In this backdrop, when it is a categorical claim of the petitioner, about the property to be having dimensions of 32' x 32', which consists of two shops and one shop, having transferred in the name of his father, on the basis whereof, he had stepped into the shoes of landlord, therefore, this question with regard to splitting of tenancy, as raised by the respondent, can only be established after the evidence is adduced.

In the given circumstances, though learned Rent Controller had correctly made observation with regard to such questions, about the extent of tenancy and also about the question of splitting of tenancy, as raised by the tenant, to be adjudicated after the evidence is adduced but at the same time,

had erroneously framed preliminary issues. These issues are also required to be taken into consideration, when the evidence is adduced in the main case. In these circumstances, the question with regard to maintainability, as asserted by the respondent, cannot be treated as preliminary issue. The issues framed are mixed question of law and fact and therefore, they cannot be treated as preliminary issues and adjudicated, at first instance.

In the light of the aforesaid observations, the revision petition is hereby allowed and the impugned order is set aside, as a result whereof, the application filed, at the instance of the respondent-tenant, stands dismissed.

March 04, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No