

In the High Court of Punjab and Haryana, at Chandigarh

1. Execution Second Appeal No. 25 of 2020 (O&M)

Mohd. Shameem

... Appellant(s)

Versus

Mohd. Saleem and Others

... Respondent(s)

AND

2. Execution Second Appeal No. 26 of 2020 (O&M)

Mohd. Shameem

... Appellant(s)

Versus

Mohd. Saleem and Others

... Respondent(s)

DATE OF DECISION: 18.07.2024

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Sunny Kumar Singla, Advocate
for the appellant(s).

Mr. Jai Bhagwan and Mr. Sanjeev Kumar, Advocates
for respondent No.1 to 3.

Anil Kshetarpal, J.

1. These two Execution Second Appeals have been filed by the objector. Before the Executing Court, the appellant has filed objection petition which was dismissed by the Executing Court as well as the Appellate Authority.

2. To demonstrate the *inter se* relationship between the parties, a small family tree is drawn as under:-

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Habib Ullah			
↓			
Mohammad Bashir			
↓			
Rashidan (Wife)		Hanifan (Wife)	
↓		(Defendant No.1)	
		↓	
Mohd. Salim (Plaintiff)	Mohd. Jamil (Defendant No.3)	Mohd. Shafiq (Defendant No.4)	Mohd. Shameem (Defendant No.2)

3. Mohd. Bashir had married twice. The name of his first wife was Rashidan. From the loins of Mohd. Bashir, Rashidan gave birth to three sons, who are the decree holders. Subsequently, Mohd. Bashir married Hanifa. The couple was blessed with a son, namely Mohd. Shameem (the appellant). Mohd. Bashir is stated to have inducted Anoop Kumar as a tenant in the suit property. Hanifa claims that the suit property was gifted in her favour by her father-in-law Habib Ullah. She subsequently filed a civil suit against Habib Ullah claiming declaration to the effect that she is the owner of the suit property, which was decreed on 15.10.2003. There was another round of litigation between the daughters of Habib Ullah and Mohd. Bashir. The aforesaid suit was dismissed on 27.07.1996 and it was found that Habib Ullah was not the owner of the property and the property was purchased with the funds of M/s R.Habib Ullah.

4. In the year 2012, three sons from Rashidan filed eviction petition under the East Punjab Urban Rent Restriction Act, 1949, against Anoop Kumar seeking his eviction. Anoop Kumar appeared in the Court and made a statement that he has handed over the possession to Hanifa. Anoop Kumar stopped appearing before the Court of Rent Controller resulting in eviction order in favour of the respondents i.e. the children of



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Rashidan. They filed execution petition in which Mohd. Shameem filed an objection petition. Both the Courts below have held that Mohd. Shameem is the legal heir of Hanifa, who entered into possession of the tenanted premises during the pendency of the eviction petition as the tenant had handed over its possession to her. Thus, the objection petition was dismissed.

5. There is another round of litigation pending between the parties. The children of Rashidan have also filed a suit for declaration that the decree dated 15.10.2003 in favour of Hanifa is illegal, null and void and they are the joint owners of the property. The aforesaid suit has been dismissed on 16.10.2023 against which the appeal is pending.

6. The learned counsel representing respondent No.1 to 3 submits that in the aforesaid judgment, the Court has also declared that the transfer of property by Hanifa in favour of Mohd. Shameem is incorrect.

7. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book.

8. The learned counsel representing the appellant contends that in view of the dismissal of the respondents' suit on 16.10.2023, the possession cannot be delivered to them. He submits that the respondents are not the owners of the property and, therefore, they are not entitled to execute the decree.

9. Per contra, the learned counsel representing respondent No.1 to 3 has submitted that the appellant's predecessor-in-interest, namely Hanifa, entered into possession during the pendency of the eviction proceedings.



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Hence, she is the representative-in-interest of Anoop Kumar who had been ordered to be evicted. He further submits that an enforceable eviction order is required to be implemented.

10. This Court has considered the submissions of the learned counsel representing the parties.

11. It would be noted that the expression 'landlord' is not synonymous with "owner". Admittedly, the suit property was let out by Mohd. Bashir who was the predecessor-in-interest of the parties. The appellant is in possession of the property only because Anoop Kumar, during the pendency of proceedings seeking his eviction, surrendered the possession in favour of his mother, namely Hanifa, during the pendency of the eviction proceedings. Hence, she became the representative-in-interest of Anoop Kumar. In the rent petition, the question of ownership of the property is not relevant. It is not necessary that the landlord must be the owner of the property. In any case, the dispute between the parties is pending before the First Appellate Court in appeal filed against the judgment and decree dated 16.10.2023. The entitlement of the property will be decided in the aforesaid litigation. However, as already noticed, the appellant entered into the possession because Anoop Kumar surrendered its possession in favour of his mother, namely Hanifa. The appellant has no right to take possession of the premises in such manner.

12. Keeping in view the aforesaid facts, no ground is made out to interfere with the impugned orders passed by both the Courts below. Hence, both the appeals are dismissed.

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13. The miscellaneous application(s) pending, if any, in both the
appeals shall stand disposed of.

(Anil Kshetarpal)
Judge

July 18, 2024
“DK”

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