



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-6626-2023 (O&M)
Date of Decision: October 01, 2024

Subhash Chand
...Petitioner

Versus

Gaurav Adlakha
...Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Sunil Chadha, Senior Advocate with
Mr.Akshay Chadha, Mr.Tara Dutt and
Mr.Paras Chander, Advocates for the petitioner.

Mr.Amit Jhanji, Senior Advocate with
Ms.Priyanka Kansal, Advocate for the respondent.

ARCHANA PURI, J.

The present revision petition has been filed by the petitioner-tenant to assail the judgment dated 29.04.2023 passed by learned Appellate Authority, whereby, an appeal filed by the respondent-landlord to challenge the order of dismissal of the eviction petition dated 02.09.2022 passed by learned Rent Controller, was allowed and eviction of the petitioner-tenant was ordered.

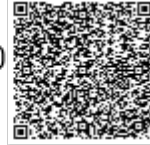
For the convenience of discussion, the parties are referred to as petitioner and respondent, as making appearance before learned Rent Controller.

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The facts germane, to be noticed, are as follows:-

That, Gaurav Adlakha, while asserting himself to be one of the landlord/owner of shop No.3, measuring 11ft. 21 ft. (25.66. square yards), had filed a petition to seek eviction of Subhash Chand-tenant.

It was asserted that earlier Smt.Kheri Bai, wife of late Sh.Sobha Ram was owner of plot No.2A/12 B.P. NIT Faridabad, area measuring 640 square yards, by virtue of sale deed No.328 dated 20.08.1962, duly registered with Sub-Registrar, Ballabhgarh. The demised shop was let out to respondent (Subhash Chand), under the agreement dated 19.11.2007 by one of the co-owner, namely Sanjay Adhlakha, real uncle of petitioner (Gaurav Adlakha). Smt.Kheri Bai, during her lifetime, had executed a Will, in favour of petitioner, his brother and uncle Sanjay Adhlakha. By virtue of this Will, it was clarified that shop No.4 was given to Sanjay Adlakha in the year 1980 and rest of the building is in the name of Smt.Kheri Bai. Smt.Kheri Bai had bequeathed the whole property No.2A/12 B.P. NIT Faridabad, except shop No.4, comprising of 11 shops, basement, ground floor, halls and guest house at first floor and second floor, after her death, to her son Sanjay Adlakha to the extent of half share and to her grandsons i.e. petitioner and Samar Adlakha, to the extent of 1/4th share each. Smt.Kheri Bai had died on 20.01.2002. After her death, the property devolved upon petitioner as well as Samar Adlakha and Sanjay Adlakha. Petitioner is graduate and he intends to start a business of curtains and bed-sheets. The shop in question is best and ideal accommodation for the petitioner to run the business. The other co-sharers have also consented for running the business of curtains

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and bed-sheets, in the said shop. Also, it was averred that the respondent is paying the rent to petitioner, Samar Adlakha and Sanjay Adlakha, as per their shares. The petitioner is not having much income to run his livelihood. He is married and not able to earn as much income, to maintain his family in proper manner. He intends to start his own business of curtains and bed-sheets and the shop in question is the ideal accommodation, to start the said business.

Also, it was averred that petitioner, Samar Adlakha and Sanjay Adlakha, were given total area of 640 sq. yards. Some shops were also constructed behind the demised premises, but the portion other than shops No.1 to 5, was demolished by Municipal Corporation, Faridabad and is lying vacant. Hence, the eviction petition was filed.

In reply, respondent-Subhash raised various preliminary objections, thereby, disputing the locus standi, to file the eviction petition and also disputed the maintainability of the petition in the present form. That the petitioner has no cause of action and the petition is malafide. In fact, the respondent had asserted that there is relationship of landlord and tenant between the petitioner and respondent. In fact, shop No.3, forming part of plot No.2A/12 B.P. NIT Faridabad, was let out to the respondent by Sanjay Adlakha, vide lease agreement dated 19.11.2007 and he has been making regular payment of rent amount to Sanjay Adlakha, since the date of inception of tenancy. On merits, it was asserted about there to be no relationship of landlord and tenant between the petitioner and the respondent. In fact, it was denied that the petitioner is one of the

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landlord/owner, in respect of the shop in question. Also, it was denied for want of knowledge about Smt.Kheri Bai, to be owner of the plot No.2A/12 B.P. NIT Faridabad, measuring 640 sq. yards, by virtue of sale deed dated 20.08.1962. Furthermore, it was also asserted that the respondent is tenant under Sanjay Adlakha, vide lease deed dated 19.11.2007. It was denied that Sanjay Adlakha is the co-owner along with the petitioner, vis-a-vis, the shop in question. Also, it was denied that Smt.Kheri Bai, executed a Will, during her lifetime, thereby, bequeathing property No.2A/12 B.P. NIT Faridabad, except shop No.4, comprising of 11 shops, basement, ground floor, halls and guest house at first floor and second floor to Sanjay Adlakha and 1/4th share of the property each to the petitioner and his brother Samar Adlakha. The alleged Will, if any, is a sham document.

Also, it had been denied that the respondent had been making payment of rent amount to the petitioner, Samar Adlakha and Sanjay Adlakha, as per their share. Further, it was denied that the landlord intends to start business of curtains and bed-sheets, in the demised premises.

Issues were framed and both the sides adduced evidence.

The petitioner himself stepped into witness box as PW-3 and further also examined, PW-1 Rajesh, Manager, Bank of Maharashtra branch at NIT Faridabad, PW-2 Sanjay, Clerk, Punjab National Bank branch at Sector 15 Faridabad, PW-4 Satish Kumar, Clerk, MCF, Faridabad, PW-5 Satya Prakash Mittal, Draftsman, PW-6 Rajinder, ARC, Office of Sub Registrar, Faridabad, PW-7 Sanjay Adlakha, PW-8 Janender Singh, Clerk, Office of House tax, Zone-I, MCF, NIT Faridabad and PW-9 Vijay Singh,

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Clerk, MFC (water department), NIT Faridabad.

To rebut the claim of the petitioner, respondent-Subhash Chand, stepped into witness box as RW-1 and further also examined RW-2 Jakir Hussain, Clerk, MIC, NIT Zone Faridabad and RW-3 Rambir, Record Keeper, Bank of India, branch NIT Faridabad.

After hearing learned counsel for the parties and on appraisal of the evidence, brought on record, vide order dated 02.09.2022, learned Rent Controller, had dismissed the eviction petition.

Feeling aggrieved, landlord-Gaurav Adlakha filed the appeal, which was allowed vide judgment dated 29.04.2023 and eviction of the tenant was ordered.

Further, to assail the judgment passed by learned Appellate Authority, tenant-Subhash Chand, has filed the revision petition in hand.

Learned counsel for the parties heard.

At the very outset, it be noted that in the pleadings and the affidavit tendered in evidence, the petitioner has specifically pleaded/deposed about his grand mother Smt.Kheri Bai, to be owner of plot No.2A/12 B.P. NIT Faridabad, measuring 640 sq. yards. During the lifetime, she had executed a Will dated 05.12.2001 Ex.P6/A and bequeathed the same, in favour of the petitioner and his brother Samar Adlakha, to the extent of 1/4th each and other half share was bequeathed to their uncle Sanjay Adlakha, in respect of the shops, existing on the said property, except shop No.4. Smt.Kheri Bai died on 20.01.2002 and the property devolved upon the beneficiaries of the Will, as per their share. Also, it was deposed

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that demised shop No.3 was let out by Sanjay Adlakha, in favour of Subhash Chand, vide lease deed dated 19.11.2007, copy whereof is Ex.P7, but the rent was being received in joint account of all the co-owners, including the petitioner. Later on, in pursuance of family settlement between the petitioner and his uncle Sanjay Adlakha, the demised premises fell to his share. Since, he requires the demised premises for his personal use and occupation, to run a business, he being co-owner-cum-landlord, is entitled to evict the respondent. Also, it is the claim of the petitioner that even Sanjay Adlakha has consented to the same and there is no dispute between the co-owners, relating to the said shop, to be used by the petitioner. In this regard, even Sanjay Adlakha has been examined as PW-7.

On the other hand, tenant-Subhash Chand had denied about the existence of relationship of landlord and tenant, between him and the petitioner. In fact, he asserted about himself to have been inducted as tenant by Sanjay Adlakha, on the basis of the lease deed dated 19.11.2007 and that he is paying rent to Sanjay Adlakha regularly, ever since the inception of tenancy.

However, from the material adduced, it stands established that that Smt.Kheri Bai was the owner of the plot No.2A/12 B.P. NIT Faridabad, of which, demised shop No.3, is a part. Also, the execution of the Will by Smt.Kheri Bai stands amply established. PW-6 Rajinder, ARC, office of Sub-Registrar, Faridabad, has been examined, who, on the basis of the record, brought by him, has proved the Will dated 05.12.2001, executed by Smt.Kheri Bai, copy whereof is Ex.P6/A. Perusal of the Will reveals about



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Kheri Devi to have bequeathed the property No.2A/12 B.P. NIT Faridabad, to the extent of 1/2 share in favour of Sanjay Adlakha and 1/4th share to petitioner-Gaurav Adlakha and other 1/4th share to his brother Samar Adlakha, son of Tilak Raj (who is deceased son of Smt.Kheri Bai). The fact of death of Smt.Kheri Bai also stands amply established. In this regard, suffice to make reference to the testimony of PW-4 Satish Kumar, Clerk, MCF, Faridabad, who had proved entry made with regard to the death of Smt.Kheri Bai, copy whereof is Ex.P4/A and copy of death certificate is Mark 'A'.

On the basis of the recitals of the aforesaid Will, by virtue of inheritance, the petitioner has 1/4th share and thus, was a co-sharer, vis-a-vis, the property in question.

Learned counsel for the tenant has argued that landlord was not competent to file the ejectment petition, as he does not fall within the definition of 'landlord'. He may be one of the co-owner, but not the landlord, as the tenant was paying rent to Sanjay Adlakha, on the basis of the lease deed, executed by him. He submits that there is no relationship of landlord and tenant, with Gaurav Adlakha and therefore, petition under Section 13 of the Rent Act is not maintainable.

No doubt, lease deed dated 19.11.2007 was executed between Sanjay Adlakha and Subhash Chand, but however, on the basis of inheritance of Kheri Bai, the ownership to the extent of 1/4th share accrued in the property in question, in favour of Gaurav Adlalkha. He asserts about family settlement having reached between him and other co-owners and on



the basis thereof, he projects his '**need**' of shop No.3, for running the business of bed-sheets and curtains.

It is well settled that one of the co-owner can file a suit for eviction of the tenant in the property, generally owned by co-owners. 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 other co-owners. The consent of co-owners is assumed as taken, unless, it is shown that the co-owners were not agreeable to eject the tenant and the suit was filed, in spite of their disagreement.

In this regard, beneficial reference is made to ***M/s India Umbrella Manufacturing Co. and others vs. Bhagabandei Agarwalla (Dead) by Lrs. Smt.Savitri Agarwalla, 2004(1) RCR (Civil) 686***, wherein, the Court observed, as herein given:-

"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 v. Jagannath (1976) RCR (Rent) 832 : [(1976) 4 SCC 184] and Dhannalal v. Kalawatibai, 2002(2) RCR (Rent) 126 : [(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."

The aforesaid observations were also relied upon by the Hon'ble Supreme Court in ***Mohinder Prasad Jain vs. Manohar Lal Jain, 2006(2) RCR (Civil) 36.***

The suit filed by the co-owner, thus is maintainable in law. It is not necessary for the co-owner to show before initiating the eviction proceedings before Rent Controller that he had taken the option or consent of other co-owners. However, in the event, a co-owner objects thereof, the same may be a relevant fact. However, the instant case stands on a better footing as Sanjay Adlakha, with whom tenant-Subhash Chand claimed to be having relationship of landlord and tenant, has also stepped into box as PW-7. He has categorically deposed, in consonance with the pleaded case of petitioner-Gaurav Adlakha. From the testimony of said witness, it becomes evident that Sanjay Adlakha, who admittedly was the landlord of tenant Subhash Chand, did not continue to claim himself alone to be landlord. He also emphasised upon mutual understanding having reached between co-owners. He has categorically so stated in his affidavit, in paragraph No.5, which in verbatim, is reproduced herein:-

"5. That the deponent is one of the co-owners and has every right to file the present petition. The present petition is being filed by the petitioner as the petitioner is willing to start the business of curtains, bed sheets in the shop in dispute. The deponent, Samar Adlakha and petitioner with their mutual

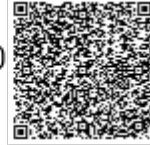


understanding have decided that the deponent will start the business of tours and travels for his son in shop No.4. The petitioner will do his business of curtains and bed sheets in shop No.3 and Samar Adlakha will start the restaurant business in Shop No.2.”

This witness has also deposed about ownership of property in question by Smt.Kheri Bai, at first instance and further also deposed about Smt.Kheri Bai to have executed registered Will, during her lifetime, in favour of the petitioner, Samar Adlakha and this witness. He also deposed about all of them, to have become joint owners of the shop in dispute. He further deposed in his affidavit, about the rent given by tenant-Subhash Chand to be deposited in the joint account bearing No.20020522956 with Bank of Maharashtra, which is in the name of petitioner, deponent (i.e. Sanjay Adlakha) and Samar Adlalkha. He also deposed that all three of them have obtained a joint loan from Punjab National Bank and the entire rent, which is being paid in respect of the shop in dispute as well shop Nos.1, 2 and 5, is also transferred in joint account bearing No.1111000100292275-PNB, which is being adjusted in the loan account.

Though, the tenant disputes about the family settlement, but however, this issue, at the maximum, could be questioned by the interested/affected parties, on the ground of fraud or collusion, but however, the same could not be called in question, by a person, who is in occupation of the premises, as tenant.

Admittedly, there is no dispute between the petitioner and his



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co-owners, with regard to the property, having inherited from Smt.Kheri Bai, on the basis of the Will and thereupon, on the basis of mutual understanding, the shop in question is required by the petitioner to run the business of bed-sheets and curtains. Thus, this mutual understanding or family settlement, so reached between the co-owners, cannot be questioned by the tenant, more particularly, when Sanjay Adlakha, who admittedly was the landlord, did not continue to claim himself alone as landlord. Rather, he himself speaks about mutual arrangement made between the co-owners.

On the basis of the evidence, adduced in the case, the landlord has been able to show that there is testament in his favour and that being so, the petitioner-landlord is deemed to have discharged his burden of ownership, vis-a-vis, Rent Control Act. At the best, it could have been challenged by the co-owners, but certainly not by the tenant and therefore, the objection of the tenant herein, to the maintainability of the eviction petition, is not tenable.

In the given circumstances, it stands amply established that the petitioner has right of ownership in the demised premises and considering the same, he is also one of the landlord, more particularly, when in pursuance of the execution of the lease deed, the rent was received in the joint account of all the co-owners. Thus, the petition for seeking ejectment, on the ground of 'personal necessity' filed by Gaurav Adlakha, as such, is definitely maintainable.

Now, coming to the '**need**' as projected by the landlord. Even, though, it is submitted that the 'need' has been projected falsely, with the



purpose to secure eviction only, but however, this contention is without basis. Learned Appellate Authority has appropriately observed that tenant cannot dictate terms to the landlord. The law is well settled that need of the landlord has to be seen from the angle of the landlord and not from the view point of the tenant. Even though, an attempt has been made to establish, by way of examination RW-2 Jakir Hussain, Clerk, MCF, about the shop having allotted in the name of Tilak Raj i.e. father of Gaurav Adlakha and allotment has been proved as Ex.RW2/1, but however, this property was on lease and it is evident from the cross-examination of the aforesaid witness that qua shop in question, the vacation notice was issued to Tilak Raj in 1999. This shop is not shown to be ever in possession of Gaurav Adlakha and therefore, the attempt made to show about alternative accommodation being available with Gaurav Adlakha, does not stand established.

Even if it be so, then also, it is for the landlord to determine the suitability of the accommodation for his requirement. No terms, as such, can be dictated by the tenant. The only requirement is that 'need' should be sincere and honest and not a mere pretense. The landlord is best judge to make assessment of his 'need'.

Learned Appellate Authority has correctly appraised the testimony of Gaurav Adlakha and reached the conclusion about his 'need' to be bonafide. The '**need**' projected by the landlord is neither whimsical nor fanciful. Considering clear and cogent evidence threadbare, learned Appellate Authority, has thus, rightly allowed the appeal and ordered eviction of the tenant. The judgment under challenge suffers from no



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infirmity, impropriety or illegality and thus, the impugned judgment, warrants no interference.

Hence, the revision petition sans merit and is hereby dismissed.

October 01, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No