



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

131

CR-5891-2024 (O&M)

Date of Decision: 14.10.2024

SHOUKINE

...Petitioner

Versus

AJAY MOHAN SINGH

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Gurcharan Dass, Advocate
for the petitioner.

VIKAS SURI, J. (ORAL)

1. Challenge in this petition under Article 227 of the Constitution of India is to the order dated 13.09.2024 (Annexure P-1) passed by the learned Rent Controller, Ludhiana, whereby the application filed by the petitioner (respondent in the rent petition) for dismissal of the rent petition being counterblast and not maintainable, has been dismissed.

2. The facts in brief relevant for decision of the present petition are that the petitioner was tenant in the demised premises and had entered into an agreement to sell with the landlord/owner. As per the agreement to sell dated 26.05.2021 (Annexure P-6), the sale consideration was Rs.9 lakh and a sum of Rs.4,50,000/- had been paid as earnest money and the remaining amount was to be paid at the time of registration of sale deed. The target date for registration of the sale deed was fixed as 27.12.2021. It was also stipulated in the agreement to sell that the possession would be handed over to the purchaser after receipt



of the full amount. On 31.01.2022, another amount of Rs.2,20,000/- was paid by the petitioner to the owner and the date for registration of the sale deed was extended from 27.12.2021 to 18.04.2022. It was reiterated that the remaining terms and conditions of the agreement to sell dated 26.05.2021 would remain the same. On 18.06.2022, petitioner filed a suit for specific performance of agreement to sell dated 26.05.2021 supplemented by endorsement dated 03.03.2022 whereby it was acknowledged that as on 31.01.2022, a sum of Rs.6,80,000/- had been received towards sale consideration from the petitioner.

2.1 On 08.08.2023, the respondent-landlord filed a rent petition under Section 20(2)(a) and (q) of the Punjab Rent Act, 1995, for eviction of the petitioner from the demised premises.

3. Upon notice of the rent petition, the petitioner filed written statement along with the application for dismissal of the rent petition. Respondent-landlord filed reply to the aforesaid application and after considering the rival contentions, learned rent Controller dismissed the said application vide impugned order dated 13.09.2024 (Annexure P-1).

4. Aggrieved by the aforesaid, the petitioner has assailed the said order by way of present petition.

5. Learned counsel for the petitioner has vehemently argued that the relationship of the landlord and tenant stood determined on the parties entering into agreement to sell dated 26.05.2021 qua the demised premises. He has relied upon the decision in ***R. Kanthimathi and others vs. Mrs. Beatrice Xavier***, 2001 (3) PLR 587 and ***Smt. Sashi Jain @ Shashi Jain vs. Sandip Sarkar***, AIR 2022 Calcutta 225 (DB).



6. Learned counsel for the petitioner contends that the rent petition has been filed as counterblast to the suit for specific performance of the agreement to sell dated 26.05.2021 and having received about 3/4th of the total sale consideration, it did not lie in the mouth of the owner to file the rent petition seeking ejectment of the petitioner from the same property. It is further contended that it is a ploy to pressurize the petitioner.

7. I have heard learned counsel for the petitioner and perused the paper book with his able assistance.

8. It is not disputed that the petitioner was tenant in the demised premises and the respondent-owner is the landlord qua the same. Thus, the issue that arises for consideration in the present case is whether on execution of an agreement to sell, the relationship of the landlord and tenant ceases to exist.

9. In ***R. Kanthimathi's case*** (supra), it was held that once there was an agreement to sell between the landlord and tenant, the old relationship as such comes to an end. It was further held that after the parties enter into a new cloak of seller and purchaser, their relationship is to be governed under the said terms of the agreement and every right and obligation thereafter is to flow from it.

9.1 The aforesaid judgment was noticed in a subsequent decision of the Apex Court reported as ***H.K. Sharma vs. Ram Lal (2019) 4 SCC 153***. Having noticed the view taken in ***R. Kanthimathi's case*** (supra), their Lordships formulated a question for consideration, as when the lessor enters into an agreement to sell the tenanted property to his



lessee during the subsistence of the lease, whether execution of such agreement would *ipso facto* result in determination of lease and sever the relationship of the lessor and lessee in relation to the leased property. Their Lordships laid down that the aforesaid question has to be decided keeping in view the provisions of Section 111 of Transfer of Property Act, 1882 and the intention of the parties to the lease - whether the parties intended to surrender the lease on execution of such agreement in relation to the tenanted premises or they intended to keep the lease subsisting notwithstanding the execution of such agreement. It was held as thus:-

26. A lease of an immovable property is a contract between the lessor and the lessee. Their rights are governed by Sections 105 to 117 of the TP Act read with the respective State rent laws enacted by the State. Section 111 of the TP Act deals with the determination of lease. Clauses (a) to (h) set out the grounds on which a lease of an immovable property can be determined. Clauses (e) and (f) with which we are concerned here provide that a lease can be determined by an express surrender; in case, the lessee yields up his interest under the lease to the lessor by mutual agreement between them whereas clause (f) provides that the lease can be determined by implied surrender.

27. This Court in *Shah Mathuradas Maganlal & Co. v. Nagappa Shankarappa Malage* considered the scope of clauses (e) and (f) of Section 111 of the TP Act and laid down the following principle in para 19 as under:

“19. A surrender under clauses (e) and (f) of Section 111 of the Transfer of Property Act, is an yielding up of the term of the lessee's interest to him who has the immediate reversion or the lessor's interest. It takes effect like a contract by



mutual consent on the lessor's acceptance of the act of the lessee. The lessee cannot, therefore, surrender unless the term is vested in him; and the surrender must be to a person in whom the immediate reversion expectant on the term is vested. Implied surrender by operation of law occurs by the creation of a new relationship, or by relinquishment of possession. If the lessee accepts a new lease that in itself is a surrender. Surrender can also be implied from the consent of the parties or from such facts as the relinquishment of possession by the lessee and taking over possession by the lessor. Relinquishment of possession operates as an implied surrender. There must be a taking of possession, not necessarily a physical taking, but something amounting to a virtual taking of possession. Whether this has occurred is a question of fact.”

28. It is in the light of the aforementioned legal principle, the question involved in this case has to be examined.

29. Perusal of agreement to sell dated 13-5-1993 (Annexure P-1) shows that though the agreement contains 9 conditions but none of the conditions provides, much less in specific terms, as to what will be the fate of the tenancy. In other words, none of the conditions set out in the agreement dated 13-5-1993 can be construed for holding that the parties intended to surrender the tenancy rights.

30. A fortiori, the parties did not intend to surrender the tenancy rights despite entering into an agreement of sale of the tenanted property. In other words, if the parties really intended to surrender their tenancy rights as contemplated in clauses (e) or (f) of Section 111 of the TP Act while entering into an agreement to sell the suit house, it would have made necessary provision to that effect by providing a specific clause in the agreement. It was, however, not done. On the other hand, we find that the conditions set out in the



agreement do not make out a case of express surrender under clause (e) or implied surrender under clause (f) of Section 111 of the TP Act.

31. It is for this reason, the law laid down by this Court in *R. Kanthimathi* has no application to the facts of this case and is, therefore, distinguishable on facts. Indeed, it will be clear from mere perusal of para 4 of the said decision quoted hereinbelow:

“4. As aforesaid, the question for consideration is, whether the status of tenant as such changes on the execution of an agreement of sale with the landlord. It is relevant at this junction first to examine the terms of the agreement of sale. The relevant portions of the agreement of sale record the following:

‘I the aforesaid Mrs Beatrice Xavier hereby agree out of my own free will, to sell, convey and transfer the property to you Mrs R. Kanthimathi wife of Mr S. Ramaswami, 435 Trichy Road, Coimbatore for a mutually agreed sale consideration of Rs 25,000.

I shall be proceeding to Coimbatore and shall execute the sale deed and present the same for admission and registration before the Registering Authority, accepting and acknowledge payment of the balance of consideration of Rs 5000 (Rupees five thousand only) at the time of registration *and shall complete the transaction of sale and conveyance as the property demised has already been surrendered to your possession.*”

The words highlighted in italics of the agreement were construed by their Lordships for holding that these italicised words in the agreement clearly indicate that the parties had really intended to surrender their tenancy rights on execution of the agreement of sale and bring to an end their jural relationship of the landlord and tenant.

10. In the case in hand, perusal of the agreement to sell goes to show that it contained a specific recital that possession would be handed



over to the purchaser after receiving the full amount. The lessor was in constructive possession through the tenant and perusal of the agreement to sell or subsequent extending the date of registration of the sale deed from 27.12.2021 to 18.04.2022 and payment of part of balance sale consideration in the sum of Rs.2,20,000/- as noticed in the endorsement dated 03.03.2022 do not indicate that the parties to the agreement intended to sever the relationship of landlord and tenant. In view of the same, the judgment in ***H.K. Sharma's case*** (supra) will be applicable on all fours to the facts and circumstances of the present case. The division bench of the Calcutta High Court in ***Smt. Sashi Jain's case*** (supra) relying upon ***R. Kanthimathi's case*** (supra) would be inconsequential to the case of the petitioner.

11. In view of the above discussion, this Court is of the considered view that the impugned order dated 13.09.2024 (Annexure P-1) does not suffer from any illegality or infirmity warranting interference in exercise of power of superintendence.

12. Accordingly, the present petition being bereft of merit is dismissed in *limine*.

October 14, 2024

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(VIKAS SURI)
JUDGE

Whether Speaking / Reasoned : Yes/No

Whether Reportable : Yes/No