

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

136

CR-7206-2024**Date of decision : 18.12.2024****Kishan Singh****..... Petitioner****versus****Smt. Bharti Gupta****..... Respondent****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

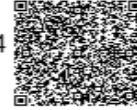
Present: Mr. Sanjay Jain, Advocate
for the petitioner.

PANKAJ JAIN, J. (Oral)

1. Present revision petition is directed against order dated 26.09.2024, whereby tenant in appeal has been directed to pay mesne profit and use and occupation charges @ Rs.3,000/- per month.

2. Petitioner who came in possession of the demised premises as tenant faced eviction proceedings instituted on 24.12.2014 by respondent under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973. The petitioner has been ordered to be evicted by the Rent Controller, Ambala vide order dated 15.12.2023. In appeal preferred by the tenant, landlord filed application for directing the tenant to pay arrears of rent and use of occupation charges/mesne profit of the property in question. On the aforesaid application, the impugned order has been passed, directing the petitioner to pay use and occupation charges.

3. Learned counsel for the petitioner-tenant while assailing the impugned order submits that much prior to filing of the eviction petition, petitioner-tenant purchased 1/2 share in the demised premises and thus,



became co-sharer. He further relies upon written statement filed on behalf of landlady in a suit filed by petitioner seeking decree of permanent injunction, wherein she denied the landlord-tenant relationship between the parties and claimed that the plaintiff was in unauthorized occupation and also filed counter claim. The said *lis* is pending in ***RSA No.4196 of 2005***, titled as ***Thakur Dass vs. Surjit Singh and others*** decided on 23.02.2010.

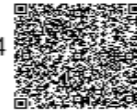
4. I have heard counsel for the petitioner and have carefully gone through the records of the case.

5. It is matter of record that the petitioner has suffered order of eviction under Section 13 of the 1973 Act in terms of ratio of law laid down by Supreme Court in the case of ***M/s. Atma Ram Properties (P.) Ltd. vs. Federal Motors Pvt. Ltd. 2005(1) RCR (Civil) 212***. Once the relationship between the parties gets snapped by passing of an order by the Rent Controller, statutory tenant is required to pay use and occupation charges. The same are required to be assessed by the Appellate Court. The issue before this Court is whether by purchasing of 50% share in the suit property, the petitioner-tenant can claim that the tenancy has come to an end and has merged in his right of ownership. The merger is governed by provision as contained under Section 111 of the Transfer of Property Act, which reads as under:-

“111. Determination of lease.—

A lease of immoveable property determines—

- (a) by efflux of the time limited thereby;
- (b) where such time is limited conditionally on the happening of some event—by the happening of such event;
- (c) where the interest of the lessor in the property terminates



on, or his power to dispose of the same extends only to, the happening of any event—by the happening of such event;

(d) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right;

(e) by express surrender; that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them;

(f) by implied surrender;

(g) by forfeiture; that is to say,

(1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter; or

(2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; or

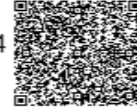
(3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event; and in any of these cases the lessor or his transferee gives notice in writing to the lessee of his intention to determine the lease;

(h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.”

6. As per settled law, merger of lessee’s estate in that of larger estate of ownership shall come into effect only when tenant acquires full ownership of the estate and not merely part thereof. Reference can be made to the following observation made by Supreme Court in **‘India Umbrella Manufacturing Co. v. Bhajabai Agarwal’, 2004(3) SCC 178:-**

“xx xxx

The applicability of doctrine of merger within the meaning of Clause (d) of Section 111 of the Transfer of Property Act, 1882 is not attracted. In order to bring the tenancy to an end the merger should be complete, i.e. the interest of the landlord in its entirety must come to vest and merge into the interest of tenant



in its entirety. When part of the interest of the landlord or the interest of one out of many co-landlords-cum-co-owners comes to vest in the tenant, there is no merger and the tenancy is not extinguished. In our opinion, the first appellate Court was not justified in placing a rider on the right of the decree-holders to execute the decree unless the property was partitioned between the co-owners.”

7. The same was reiterated in ***Pramod Kumar Jaiswal v. Bibi Husn Bano, AIR 2005 Supreme Court 2857***, wherein Supreme Court observed as under:-

“33. xx xx xx. What is involved in the present case is the question whether on the acquisition of the rights of some of the co-owner landlords by the tenant, there is an extinguishment of the tenancy by merger as postulated by Section 111(d) of the Transfer of Property Act. T. Lakshmi pathi answers that question and with respect, answers that question correctly.

34. A plain and grammatical interpretation of Section 111(d) of the Transfer of Property Act leaves no room for doubt that unless the interests of the lessee and that of the lessor in the whole of the property leased, become vested at the same time in one person in the same right, a determination of the lease cannot take place. On taking an assignment from some of the co-owner landlords, the interests of the lessee and the lessor in the whole of the property do not become vested at the same time in one person in the same right. Therefore, a lessee who has taken assignment of the rights of a co-owner lessor, cannot successfully raise the plea of determination of tenancy on the ground of merger of his lessee's estate in that of the estate of the landlord. It is, thus, clear that there is no substance in the contention of the learned counsel for the appellants that in the case on hand, it should have been held that the tenancy stood determined and the application of the landlord for a direction to the tenant to deposit the rent in arrears should have been dismissed. The position of the appellants as tenants continue and they are bound to comply with the requirements of the Rent Control Act under which the order for deposit has been passed against them.”



8. Thus, mere acquisition of share of the property cannot absolve the petitioner from his liability to pay use and occupation charges. So far as the plea with respect to counter claim is concerned, the same is yet to be ascertained and adjudicated by Court and is still pending. The liability of the petitioner to pay mesne profit and user charges during the pendency of appeal is governed by ratio of law laid down in *M/s. Atma Ram Properties (P.) Ltd. (supra)*.

9. Quantification of the mesne profit is pure finding of fact and is beyond the revisional jurisdiction of this Court to re-appreciate the same in absence of any perversity.

10. Finding no merits in the present revision petition, the same is dismissed.

(PANKAJ JAIN)
JUDGE

18.12.2024
Dinesh

Whether speaking/reasoned	Yes
Whether Reportable :	No