
(2008) 11 P&H CK 0035

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Vijay Gupta etc.

APPELLANT

Vs

Smt. Leela Devi

RESPONDENT

Date of Decision: Nov. 10, 2008

Acts Referred:

- Haryana Urban (Control of Rent and Eviction) Act, 1973 - Section 13

Citation: (2009) 154 PLR 257 : (2009) 1 RCR(Civil) 942 : (2009) 1 RCR(Rent) 185

Hon'ble Judges: Kanwaljit Singh Ahluwalia, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Kanwaljit Singh Ahluwalia, J.

For the reasons stated in the application, delay in refilling the appeal is condoned.

2. Petitioners Vijay Gupta, Shiv Kumar Gupta, Arvind Kumar Gupta, Sudhir Kumar Gupta and Ashwani Kumar Gupta are legal representatives of Om Parkash Gupta. They "are stated to be residents of SCF No. 5, Sector 27-D, Chandigarh. They are aggrieved against the order passed by the Appellate Authority, Ambala which had reversed the order of ejectment passed by the Rent Controller, Ambala Cantt.

3. Om Parkash Gupta and preferred an eviction petition u/s 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973 seeking ejectment of respondent Lila Devi from the demised premises bearing House No. 4060, Hill Road, Ambala Cantt. The demised premises consist of two rooms. It was rented out to the respondent at a monthly rent of Rs. 89/- besides taxes. Subsequently, on 5.3.1992 fair rent was assessed by the Rent Controller, Ambala Cantt. It was pleaded in the rent petition that the tenant was in arrears of rent from 1.3.1993 onwards. Difference in the fair rent from 5.3.1992 to 28.2.1993 was calculated at the rate of Rs. 180/- and rent from 1.3.1993 to 31.7.1994 was calculated at Rs. 1,513/-. The amount of tax was Rs. 85/- and it was pleaded that tenant was in arrears

of rent of Rs. 1,778/-. Second ground taken in the eviction petition was that the tenant had made material alterations in the premises and has converted the verandah into room. It was stated that the wooden door had been removed and iron shutter had been installed and thereby the respondent had impaired the value and utility of the demised premises.

4. Written statement was filed on behalf of the tenant denying the ground that the material alterations have been made. It was stated that it was wrong that the verandah has been converted into room. It was stated that the wooden door was intact and that it was at the same place where it was originally fixed. However, it was stated that the respondent had affixed shutter on the thara and this thara was also covered with the roof and two side walls. In the replication, assertion of the tenant was disputed and that of the rent application was reiterated.

5. After completion of the pleadings, following issues were framed by the Rent Controller:

1. Whether the respondent has impaired the value and utility of the disputed premises. If so, its effect? OPP

2. Relief.

6. Sudhir Gupta appeared as landlord and was examined as PW-1. He stated in Court "respondent had affixed the shutter on both sides of verandah. Verandah has been converted into a room due to which value of the house has been impaired and, therefore, value and utility of the house has been diminished". Anil Malik appeared as PW-2. He has stated that he inspected the site in question and his report is Ex.PW-2/1 and the site plan is Ex.PW-2/2. He testified that the verandah has been converted into a room and thereby value and utility has been impaired and there is a change in the character of the property.

7. Dinesh Kant Jindal was examined as Expert by the tenant as RW-1. A pointed question was asked to him and he replied that once shutter is open, the space appears as verandah and when the shutter is down, it appears as a room. Surinder Kumar PW-2 appeared as attorney of tenant. He had tendered copy of judgment titled Vijay Kumar v. Lila Devi as Ex.PW-2/3.

8. The Rent Controller after considering the evidence opined as under:

...The opinion of RW1 & RW2 that even after affixing of the shutter, the verandah was still a verandah and not a room, is inconsequential because it is a established fact that the verandah has to be opened at least from one side, whereas in the tenancy premises there is a room in the back of the verandah, walls on two sides and shutter has been affixed in the front. It is very clear that by affixing of the shutter, the verandah has been converted into a room.

The Rent Controller ordered eviction of the tenant. The tenant had preferred an appeal. The Appellate Authority took into consideration admission of the tenant that he had

affixed rolling shutter in the tenanted premises and said that additions and alterations are admitted but raised a question whether such additions or alternations constitute diminishing the value and utility of the tenanted premises or not? Appellate Authority appreciated the evidence of the witnesses and concluded that Expert A.K. Malik PW-2 examined by the landlords had not determined the age of the side walls of the verandah. He also took into consideration that in cross-examination the landlord stated that he does not know as to when roof was laid by the tenant but he further admitted that there was a tin shed on the tenanted premises on the land of Municipal Committee. Hinging on this admission of the landlord that there used to be a tin shed, Appellate Authority held that there is every possibility that the side walls were existing earlier thereto support the tin shed. It has come in evidence that the verandah was covered from two side walls and rolling shutter was put up by the respondent.

9. I am of the view that the Appellate Authority rightly relied upon Waryam Singh v. Baldev Singh (2003)133 P.L.R. 154 (S.C.) and held that affixing of shutters in front of the shop by non striking of integral part cannot be said to have impaired the value and utility of the demised premises. It was further held that the landlord had not led any clinching evidence to prove that the side walls have been constructed by the tenant. Appellate Authority further held that the landlord has not spelt out the date, month or year when the shutters were affixed.

10. I have heard Shri S.K. Garg Narwana, counsel for the petitioner landlords and Shri S.K.S. Bedi, counsel appearing for the respondent-tenant. During the course of the arguments, they have provided me copies of the evidence and pleadings.

11. It is settled law that eviction of the tenant can only be caused if the tenant had carried out the construction and the same was without the consent of the landlord and such carrying out of the construction has materially impaired the value or utility of the premises. By putting the rolling shutters, it cannot be said that the verandah has been permanently covered. Appellate Authority had given a finding of fact that the rolling shutter can be removed without causing any damage to the property. I am of the view that Waryam Singh's case (supra) is fully applicable to the facts of the present case and the Appellate Authority has rightly held that no case for eviction of the tenant is made out.

12. Shri Narwana has placed reliance on Jiwan Dass (Died) through LRs. v. Smt. Raj Rani 2003(1) R.C.R. 653 to state that absence of pleadings as to when tenant had committed acts which constitute impairment are not material for determination of the issue raised. He has further relied upon Avtar Singh and Ors. R.C.R. (Rent) 437 (P&H) to state that where the tenant has merged the verandah into shop, it was held that the same amounted to impairment of value and utility. Further reliance was placed on [Vipin Kumar Vs. Roshan Lal Anand and Others](#), to contend that construction of a wall by the tenant of the shop and putting a door which stopped flow of air and light amounts to causing impairment of value and utility of the building.

In the present case, walls of the verandah were already there. Only rolling shutter has been affixed by the tenant as per findings of the Appellate Authority. While exercising revisional jurisdiction, I find no reason to interfere in the well reasoned findings of the Appellate Authority. A view has been formulated by the Appellate Authority and the same cannot be assailed as perverse. Therefore, no interference is warranted. Hence, present petition being devoid of any merit is dismissed.